

B.H.L.

THE
Practical Register:
OR, A General
ABRIDGMENT
OF THE
LAW,

As it is now practised in the several Courts of Chancery, King's Bench, Common Pleas and Exchequer, digested by way of Common-Place, under Alphabetical Heads, with great Variety of CASES extracted from the Reports.

TOGETHER WITH
All the Modern Rules of Court brought down to
this present Year 1719.

In TWO VOLUMES.

To which are added,
Two TABLES: One of the several Acts of Parliament mention'd and explain'd throughout this whole Work: the Other, of the Names of the several Heads contained in each Volume.

By JOHN LILLY, Gent.

VOL. I.

In the SAVOY:
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Practical Register:

O. R. A. General

A B R I D G M E N T

O F T H E

W

As it is now arranged in the form of a
General Register, containing the names and
descriptions of the various objects of
History, Natural History, and the
Arts, with their respective uses and
properties.



20-76

THE
BOOKSELLERS
TO THE
READER.

THE many Volumes of the Common Law which have of late been publish'd, have not hitherto silenc'd the general Complaint, That but few of them treat of the practical Part of it : And yet it is very obvious that the Methods of Practice as well at the Bar, as amongst the Clerks and Attorneys of the several Courts, has of late Years been very much altered from the former Course of Proceedings. *Style's Practical Register* is almost the only Book of this Kind which has been of any Repute or Authority; and that having been written before the Restoration of King *Charles II.* and there being since that Time so many Alterations introduced by subsequent Acts of Parliament and new Rules of Court, our Author was induced to review that Performance, and continue it down with such Alterations and Additions as rendred it compleat to the Year 1694. The Additions he afterwards publish'd to the above-

The Booksellers to the Reader.

mentioned Author met with so kind a Reception from the Gentlemen of his Profession, that during the Time of his Practice, and since his Retirement, he was encouraged to prosecute the following Work ; an Instance not only of his long Experience and solid Judgment, but also of his indefatigable Industry and Application. As this was his Favourite Undertaking, so he endeavoured to make it as compleat as possible, by inserting all the material Cases as they were published under their proper Heads, to the very Time of his Death : And also such Acts of Parliament as have altered the Practice of the Law in any Kind. The Method, we hope, will appear easie and beneficial, the Whole being digested by way of Common-place under Alphabetical Heads. All which, we presume, will render this Work entirely useful, and far superior to any Thing of this Kind hitherto extant.

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TABLE

THE following table shows the results of the experiments conducted at the University of Cambridge, during the year 1880, on the subject of the influence of the temperature of the air on the rate of the combustion of the different kinds of fuel.

The experiments were conducted in a large chamber, in which the air was circulated by means of a fan, and the temperature was measured by means of a thermometer.

The results of the experiments are given in the following table, in which the first column shows the kind of fuel, the second column shows the rate of combustion, and the third column shows the temperature of the air.

The rate of combustion was measured by means of a gasometer, and the temperature of the air was measured by means of a thermometer.

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Abatement of Writs, &c.

Abatement, vid.	Alien.	Judgment.
	Bar.	Latin.
	Baron & Feme.	Outlawry.
	Bill.	Privilege.
	Error.	Tender.
	Imparllance.	

Causes of abating of a Writ or Plaint, are
 Want of sufficient or good Matter; or
 where the Matter is not certainly alledg'd,
 also Misnomer of the Plaintiff, Defendant or Place, Va-
 riance between the Writ, Specialty or Record, Uncertainty of the
 Writ, Count or Declaration, or Death of the
 Plaintiff or Defendant; but this of Death is
 now remedied by a late Statute made 8 & 9 W. 3. cap. 10. Vide postea.

The several Causes of
 the Abatement of Writs
 or Plaints.

Every dilatory Plea or in Abatement ought to
 be certain to every Intent: But a Plea in Bar, cer-
 tain to a common Intent, is good. *Cro. Jac. 82. pl. 6.*
Long Quinto E. 4. 22. a.

How Pleas dilatory and
 in Abatement ought to
 be, and how Pleas in Bar.

If a dilatory Plea be pleaded, and the Plaintiff
 takes Issue upon it, he may conclude with a *petit*
judicium & damna, because there shall be a final Judgment: But
 where the Plaintiff does not deny, but confesses and avoids such
 Plea, he must conclude in Maintenance of his Writ. *Mod. Cases, 236.*

How Judgment to be
 in dilatory Pleas.

By the Statute of 4 & 5 Anne, for the Amend-
 ment of the Law, it is Enacted, That no dilatory
 Plea shall be received in any Court of Record, un-
 less the Party offering the same doth by Affidavit
 prove the Truth thereof, or shew some probable Matter to the Court
 to induce them to believe that the Fact of such dilatory Plea is true.

What the Defendant
 must do before his di-
 latory Plea can be re-
 ceived. 4 & 5 Anne.

Another dilatory Plea after a *Respondeas Ouster*
 ought not to be received by the Court; for but one
 dilatory Plea is allowable. 2 Saund. 41.

But one dilatory Plea
 to be allowed.

Abatement of Writs, &c.

There cannot be two Pleas to the Person of the Plaintiff.

There cannot be two Pleas to the Person of the Plaintiff, except only where his second Plea is Matter of later Time than the first Plea. 3 Leon. Case 222.

The Name of Earl, if omitted, shall abate the Writ.

of the Name; and if it be omitted in the Writ, it shall abate it. Davis's Rep. 60 a.

Creations of Honours shall not abate Writs.

1 E. 6. cap. 7. sect. 3.

The Name of Earl, in our Law, is the most ancient Name of Dignity and Honour in England, and is Parcel of the Name, and is of the Substance of the Name; and if it be omitted in the Writ, it shall abate it. By the Statute of 1 E. 6. cap. 7. Sect. 3. it is Enacted, That if any Person shall be made or created Duke, Archbishop, Marquess, Earl, Viscount, Baron, Bishop, Knight, Justice of the one Bench or the other, or Serjeant at Law, depending any Action, Bill or Suit, yet no Writ, Action or Suit shall be abateable or abated, but remain in force.

How the Entry is to be, where the Creation is made pending the Action.

Great Seal of Great Britain, bearing Date the same Day, &c. and so set forth the Patent with a Profer in Curia of it, and a quod predictus the Defendant hoc non dedicit.

The Plaintiff made a Knight pending the Writ, shall not abate the Action.

1 E. 6. cap. 7. sect. 3.

But a Baronet shall.

Bath was within that Statute? And held that he was, and so are all other Knights; but a Baronet is not, unless he be a Knight also. Sid. 40.

A Man made a Baronet, pending the Action, Whether it shall abate the Writ or no?

Car. 104. pl. 5. However see the Case.

One indicted by the Name of Knight, said that he was never knighted, and the Indictment not held to be sufficient, he was indicted de novo as a Baronet.

Debt against the Defendant as Knight and Baronet, he pleads that he was never knighted.

Note, When any such Creation is made pending the Action, there must be an Entry upon the Roll, with a post ultimam continuationem, scil. such a Day the King by his Letters Patents under the Great Seal of Great Britain, bearing Date the same Day, &c. and so set forth the Patent with a Profer in Curia of it, and a quod predictus the Defendant hoc non dedicit.

In an Assize the Defendant pleads, That the Plaintiff was made a Knight of the Bath pending the Writ. The Plaintiff replied the Statute of 1 E. 6. cap. 7. Sect. 3. where it is provided, that the Writ shall not abate where the Plaintiff is made a Knight. And the Question was, Whether a Knight of the Bath was within that Statute? And held that he was, and so are all other Knights; but a Baronet is not, unless he be a Knight also.

It came in Question, Whether being made a Baronet puis darrein Continuance should abate the Writ? But the Matter was not determined, the Plaintiff agreeing to sue out a new Original. Cro.

One indicted by the Name of Knight said upon his Arraignment, that he was never knighted, which being confess'd, he was indicted de novo by the Name of J. S. Baronet. Cro. Car. 372. pl. 6, 372.

Debt was brought against the Defendant by the Name of Knight and Baronet. He pleads in Abatement that he was never knighted. The Plaintiff moved, that he might amend his Declaration, for that

Abatement of Writs, &c.

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that the Defendant had put in Bail by the Name of *Knight and Baronet*, which the Court agreed to if it were so. But upon Examination, it was found to be Baronet only: And then they said, that they would not admit of any such Amendment; so that the Plaintiff must arrest him again. *1 Vent. 154.*

The Action abated.

Upon a Declaration delivered before the Effoin-day, the Defendant hath the first four Days in the Term following to plead in Abatement, whether the Plaintiff gives Rules to plead or no. And although the Plaintiff doth not give Rules to plead the first Day of the Term, yet a Plea in Abatement cannot be accepted after the first four Days of the Term. *Trin. 9. W. Reg. B. R.*

When to plead in Abatement.

Excommungement, or any other Plea in Disability of the Plaintiff, cannot be pleaded after a General Imparlance. *1 Lut. 19. Trin. 36 Car. 2. B. R. Latch 179.*

When to plead in Disability.

How Excommungement is to be pleaded, *vide Lut. 19. 3 Lev. 208. Cro. Jac. 82. pl. 6.*

How Excommungement is to be pleaded.

None can certify an Excommunication to disable a Man, but he to whom the Court can write to absolve him, as the Bishop, or Guardian of the Spiritualities. *8 Rep. 68. a.*

Who can certify an Excommunication.

The Excommunication must be directed *Universis Sanctæ Matris Ecclesiæ Filiis*; and not *Universis & singulis Clericis & Literatis in & per totam Diocesin*, &c. *8 Rep. 88.*

How the Excommunication must be directed.

A Man cannot, to an Action brought against him, plead in Disability of himself, that he is attainted of Treason, not pardoned or restored. *1 Leon. Ca. 466.*

A Man cannot plead in Disability of himself.

How to plead an Outlawry before, and an Outlawry after Judgment, *vide Lut. 110, 111. Vide postea. Tit. Outlawry.*

How an Outlawry is to be pleaded.

When an Outlawry must be pleaded in Abatement, and when in Bar, *Lut. 1573, 1574. Co. Lit. Sect. 197. See Title Outlawry.*

How an Outlawry is to be pleaded in Abatement.

The Defendant pleads Outlawry: The Plaintiff replies *nul tiel Record*: At the Time of the Plea the Plaintiff was outlawed, but he reversed it before the Day of the bringing in of the Record, and a *Respondeas Ouster* was awarded. *Cro. Jac. 484. pl. 2.*

Defendant pleads Outlawry, the Plaintiff replies *nul tiel Record*, and reversed it before the Day of bringing in the Record, and a *Respondeas Ouster* awarded.

The Defendant in Error can't plead Outlawry in one of the Plaintiffs in Error, this being a Suit by way of Discharge, and not to recover any thing, and it would be mischievous in case of Error, Attaint or *Audita Querela*, which are only by way of Discharge, if it should be any Bar, this Writ being but a Commission. *Cro. Jac. 616. pl. 1.*

Outlawry in one of the Plaintiffs in Error is no Plea,

Nor in Attaint,

Nor in *Audita Querela*.

They being on'y Commissions.

Abatement of Writs, &c.

Outlawry doth not abate the Writ or Bill, but disables the Plaintiff to proceed *quousq;* &c.

The Writ shall not abate for Excommunication, but *quod loquela remanet quousq;* &c.

That the Plaintiff is a Jew, is no Disability.

Jews are perpetual Enemies *Regis & Religionis*. Judgment *si actio Curia*. A Jew may recover as well as a Villein, and the Plea is but in Disability so long as the King shall prohibit them to trade; and Judgment was given for the Plaintiff. *Mich. 36 Car. 2. in B. Regis.*

How to plead the Defendant is an Alien.

How Privilege is to be pleaded.

How to conclude where the Defendant pleads his Privilege, or to the Person.

Billa predicta cassetur, &c. *M. 7 W.*

When to plead in Bar, and when in Abatement.

Abatement, it may after a *Respondeas Ouster* be pleaded in Bar. *Mich. 4 Anne Regine.*

Two Matters in a Writ, where it shall stand good for Part, and where abate for Part.

But when he brings an Action for two Things, and it appears that he cannot have this Writ for one of them, but may have another in another Form, there the Writ shall abate *in toto*, and not stand for that which is good. *11 Rep. 45. b. Vide postea.*

If upon a Plea in Abatement, Issue is found for the Pl. it is peremptory; but on a Demurrer it is a *Respond. Ofter.*

1 Keil. 869. pl. 18. 870.

This Disability of Outlawry doth not abate the Writ or Bill, but it is a Disability for the Plaintiff to proceed, until he hath gotten his Charter of Pardon, or revers'd the Outlawry. *Co. Lit. 128. b.*

When the Plea of Excommunication is allowed, the Writ doth not abate, but the Entry is *quod loquela remaneat quousque*, &c. *8 Rep. 69. a. See Title Crpal.*

A Jew brought an Action, and the Defendant pleaded that the Plaintiff is a Jew, and that all Jews are perpetual Enemies *Regis & Religionis*. Judgment *si actio Curia*. A Jew may recover as well as a Villein, and the Plea is but in Disability so long as the King shall prohibit them to trade; and Judgment was given for the Plaintiff. *Mich. 36 Car. 2. in B. Regis.*

How to plead that the Defendant is an Alien, *Co. Lit. 198. 4 Mod. Rep. 285, 405.*

Privilege of the *Custos Brevium* of the King's Bench was pleaded in *Communi Banco* after Bail, and good; but not after a general Impar lance. *3 Lev. 243.*

Where the Defendant pleads his Privilege, or to the Person, he ought to conclude his Plea, *petit Judicium si ad Billam predictam respondere compelli debeat*, &c. In other Cases he ought to conclude, *quod Billa predicta cassetur*, &c. *M. 7 W.*

A Plea that goes to the Action, and not to the Person of the Plaintiff, ought to be pleaded in Bar, and not in Abatement. And if pleaded in

Abatement, it may after a *Respondeas Ouster* be pleaded in Bar. *Mich. 4 Anne Regine.*

Where a Man brings an Action, be the Writ General, or Special and Particular; and he demands two Things; and it appears by his own shewing, that he cannot have an Action or better Writ for one of them, there the Writ shall not abate for all, but shall stand for that which is good.

But when he brings an Action for two Things, and it appears that he cannot have this Writ for one of them, but may have another in another Form, there the Writ shall abate *in toto*, and not stand for that which is good. *11 Rep. 45. b. Vide postea.*

If the Plea to the Writ be triable *per Pais*, and Issue be taken thereupon, and found for the Plaintiff, the Judgment against the Defendant must be peremptory: But if there be a Demurrer to it, then it is a *Respondeas Ouster* only. *Latch 178.*

Abatement of Writs, &c.

After a Judgment to answer over upon a Plea in Abatement, the Defendant pleaded to Issue, which was tried, but the Plea in Abatement and Judgment upon it were not entred on the *Nisi prius* Record, tho' the Plea-Roll was right, yet the Verdict was set aside, because the *Nisi prius* Record shall not be amended by it. 5 Mod. 399.

That which makes the Defendant Party to the Action, are the Words, *Venit & defendit vim & injuriam quando*, &c. And if the Defendant will plead in Disability to the Person of the Plaintiff, he must first make himself a Party by this Part of his Defence. Co. Lit. 127. But in Pleas to the Jurisdiction of the Court, *Quando* ought to be left out, because *Quando*, &c. gives the Court a Jurisdiction; as *Quando Curia consideraverit*. Ibid. Lut. 9. Shower's Rep. 386, 387.

How to plead to the Jurisdiction of the Court, see Latch, 178. Note, It must be pleaded in Person.

The Defendant pleads in Abatement, that his Name is *Fermy*, and not *Fermyn*, and pleads it thus; *Et predict' J. Fermyn venit*, &c. this is naught; for he owns the same Name as the Plaintiff hath counted: But it should have been, *Et super hoc venit J. Fermy, & dicit quod ipse est eadem persona que arrestat' fuit per nomen J. Fermyn, & dicit*, &c. Hill. 3 Wil. & Mar. Rot. 291. Shower's Rep. 394.

The Defendant pleads, that he was baptized by the Name of *Micha*, and not *Michael*. The Plaintiff replies, that he is known as well by the Name of *Michael* as *Micha*. The Defendant demurs, because he ought to have traversed that he was *Baptized*, and not that he was known by one Name and the other, for a Man cannot have two Christian Names. And Judgment was given for the Defendant. Pasch. 7 W. Regis.

Misnomer of a Partner was pleaded in Abatement, and naught; because one shall not plead *Misnomer* of his Companion. Lut. 36.

Error depending in the *Exchequer-Chamber*, was pleaded in Abatement to an Action of Debt upon a Judgment in the *King's Bench*, and concludes, *Unde petit iudicium, & quod loquela remaneat sine die*; and doth not aver his Plea: Also it was pleaded after *Imparlance*, and the Plaintiff demurred for those Causes; and the Court said, That Error suspends the Execution of the Judgment. 7 W. B. R. Lut. 602. But the Court gave no Opinion, whether the Matter of the Plea was good or no; but Shower, Rep. 146. says, That it was held to be a good Plea, either in Bar or Abatement.

A Verdict set aside for not entering of the Record in the *Nisi prius* Roll.

5 Mod. 399.

Venit & defendit makes the Defendant Party to the Action.

How to plead in Disability of the Plaintiff.

Quando gives the Court a Jurisdiction.

How to plead to the Jurisdiction of the Court.

How to plead to a *Misnomer* of a Surname.

How to plead a *Misnomer* of a Christian Name.

One Partner cannot plead *Misnomer* of his Companion.

Error depending in the *Exchequer-Chamber*, pleaded to an Action of Debt upon the Judgment in B. R.

Error suspends the Judgment.

Error depending in Camera Scaccarii is a good Plea in Abatement.

Debt on a Judgment in B. R. The Defendant pleads in Abatement, Error depending in the Exchequer-Chamber; and held good; but if the Defendant concludes, *Non debet respondere quousq;* it is not good, because we have no Resummons. 5. Mod. 68.

Where a Plea concluded in Abatement shall be good in Bar.

The Nature of a Plea in Abatement is to entitle the Plaintiff to a better Writ. Telw. 112. But where the Defendant shews that the Plaintiff hath no Cause of Action, tho' he concludes his Plea in Abatement, yet it shall be good in Bar. 12 Mod. Rep. 64, 65.

Where the Defendant Petit judicium de Brevi, and concludes in Bar.

Where the Defendant's Plea begins with *Petit judicium de Brevi*, and concludes in Bar, there a final Judgment shall be given; but where it begins in Bar, and concludes in Abatement, there it shall be only a *Respondens Ouster*. Carveth versus Prior, Pasch. 1 W. & M. Shower's Rep. 4.

So where Matter of Abatement is pleaded in Bar.

Where the Matter in Abatement is pleaded in Bar, the Plea beginning and concluding in Bar, the Judgment shall be, *quod recuperet dampna*, and not *Respondens Ouster*. Lut. 42.

Death of the Plaintiff abated the Action, before 8 & 9 Ed. 1. cap. 13.

The Death of a Plaintiff did in all Cases abate the Writ before Judgment, before the Statute of 8 & 9 W. 3. cap. 10. But now see the Statute, and the Remedy given thereby, in Title Judgment and also in Tit. Death, where Death neither of Plaintiff or Defendant shall abate it.

The Clause of the Act and a Declaration upon it.

See the Clause in the Act, and also a Declaration upon it with a Suggestion of the Death of one of the Plaintiffs according to the Statute, in Title Death.

Baron and Feme, the Feme Administratrix dies pending the Action.

Baron and Feme, the Feme is Administratrix, and an Action is brought against her Husband and her; she dies pending the Action, the Husband pleads her Death in Bar, *puis darein Continuance*. It seemed to the Court, that it ought to be pleaded in Abatement; and that also he ought to go further, and to say, that

How to be pleaded. he hath no Assets.

10 W. B. R. Vide Title *Puis darien Continuance*.

Error in the Exchequer-Chamber.

Upon a Writ of Error returnable in the Exchequer-Chamber; before the Record was transcribed one of the Plaintiffs in the Writ of Error died, and thereupon the Plaintiff in the Action taking the

One of the Plaintiffs died.

Writ of Error to be abated, sued out Execution on his Judgment, without any Rule

How Execution should be sued out.

of Court to warrant it, and took the surviving Defendant in the Action in Execution. The Court held this to be irregular, and superseded the Execution: Because the Plaintiff in the Action should have applied himself to the Court upon the Death of one of the Plaintiffs in the Writ of Error, and apprized the Court of his Death, that the Chief Justice might take notice of it, in order to make a due Return when called for. Brace & al' & Pennoyer. Trin. 9 W. B. R.

Abatement of Writs, &c.

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One who was sued as Executor, pleads in Abatement; that Administration was committed to him, and held good without a Traverse. *Pasch. 35 Car. 2. in B.R. 1 Brownl. 97. 2 Brownl. 184. 5 Mod. 136, 137.*

Administration committed, is a good Plea for one sued as Executor.

An Action, *Qui tam*, &c. was brought in this Court, the Defendant pleaded in Abatement, That he is an Attorney in the Court of Common-Pleas, and ought not to be sued out of that Court. Upon a Demurrer the Court inclined, that the Plea was a good Plea. *For altho' the King may bring his Action in what Court he pleaseth, yet the Action, Qui tam, is a popular Action, and brought by the Informer, Qui tam: And therefore they inclined to allow the Plea. Hill. 6 W. B. Regis.*

An Attorney of the Common Bench may plead in Abatement to an Action *Qui tam* in R. B.

Trespass for taking of Goods was brought against two Persons. One pleads, That he is an Attorney of the Court of Common Bench, and ought to be sued there only; and held to be no Plea: *Because an Attorney shall not have his Privilege when another is joined with him. Trin. 36 Car. 2. B. R.*

Trespass against two; one pleads, That he is an Attorney of the Common Bench; no Plea.

It is a good Plea in Abatement for the Defendant to say, That the Plaintiff is Tenant in Common or Joint-Tenant with another, but if it be not pleaded, the Defendant hath lost his Advantage of it. *Cro. Eliz. 554. pl. 7.*

Where Tenancy in Common, or Joint-tenancy is a good Plea in Abatement.

Property in a Stranger is a good Plea in Bar, or Abatement in Replevin, not in Trespass; for there it must be, Not Guilty. *2 Lev. 92. See Title Property.*

Property in a Stranger, where good in Bar or Abatement.

Upon an *Indebitatus*, the Defendant pleads in Abatement another Action depending for the same Matter in the Exchequer, and doth not say, That the Plaintiff hath declared thereupon; this is naught: *Because it cannot be traversed, whether it be for the same Matter or no. M. 7 W. B. R. and Sparries Case, 5 Rep. 61.*

Another Action depending, no Plea without saying, That the Plaintiff hath declared.

There need not be a Venue in a Replication to a Plea in Abatement; *Because all Pleas in Abatement (unless they are local) shall be tried by the Venue in the Declaration. 8 W. R.*

Need not to be a Venue in a Replication to a Plea in Abatement.

In a Replication to a Plea in Abatement, where in Matter of Fact is pleaded, there the Plaintiff must pray his Damages. And if upon an Issue a Verdict be found for him, there shall be a final Judgment; but where special Matter is pleaded to the Writ, the Plaintiff in his Replication must only maintain his Writ. *3 Anne R. in B. R.*

Where Damages must be prayed in a Replication to a Plea in Abatement.

The Judgment to be final.

No Advantage can be taken of a bad Declaration upon a Demurrer to a dilatory Plea. *M. 7 W. in B. R.*

Where no Advantage to be taken of an ill Declaration.

Abatement of Writs, &c.

Ancient Demesne plead-
ed in Abatement.

The Defendant cannot plead ancient Demesne, without a Rule of the Court for that Purpose. See 5 Rep. 105. a.

How to be tried.

If ancient Demesne be pleaded of a Manor, and denied, this shall be tried by the Record of *Domesday Book*; but if Issue be taken, whether certain Acres of Land are Parcel of the Manor or not, this shall be tried by a Jury; for it cannot be tried by the said Book. 9 Rep. 31. a.

The Reason of Abate-
ment of Writs.

The Reason of Abatement of Writs is not only because they shall not be twice charged, but also that they should not be twice vex'd for the same Debt. 3 Lev. 304.

Coverture pleaded in
Abatement after a gene-
ral Imparlance, is ill.

The Defendant pleaded after a general Imparlance, That she was Covert with one A. B. and pray'd *Judicium de billa*: This is ill, and a *Respondeas Onster* was awarded. 2 Keb. 143. pl. 16.

Ambassadors, See Privilege.

Abeiance.

Abeiance, *Quid*.

Abeiance is in the Expectation, Remembrance, Intendment and Consideration of the Law, or in nubibus. Litt. Sect. 646.

Where the Fee is in
Abeiance during Lessee
for Life's Life.

If a Man makes a Lease for Life, the Remainder to the right Heirs of I. S. the Fee-Simple is in Abeiance until I. S. dies. Co. Litt. 342. b.

So after the Death
of Tenant *pur autre Vie*.

If Tenant *pur autre vie* dies, the Freehold is in Abeiance until the Occupant enters. *Ibid*.

The Remainder shall
vest in the Heir as a
Purchaser.

If Lands be Leased to B. for Life, the Remainder for Years to his Heirs; the Remainder for Years is in Abeiance until the Death of the Lessee, and then it shall vest in the Heir as a Purchaser, and as a Chattel, and shall go to his Executors, and Tenant for Life cannot touch it. 3 Leon. fol. 23.

Acceptance.

Acceptance, See { Accord and Satisfaction.
Payment.
Rent.
Void, and Voidable.

A cceptance is a taking in good part ; and Quasi an Agreement to some Act done before, which might have been done and avoided, if such Acceptance had not been by him that so accepted. *Acceptance, Quid.* Terms of the Law, 5. b.

If a Man be bound in a Bond with a Condition to do a particular specific thing, collateral to the Bond ; here, Acceptance of another Thing in Satisfaction is no Plea ; but if the Condition be for the Payment of Money ; there, Acceptance of a collateral Thing (before the Money due) is a good Satisfaction. *Dyer 1. a. Perkins Sect. 149.*

Where Acceptance of another Thing in Satisfaction of a Bond is no Plea, and where it is.

Note, the Defendant must plead that the Plaintiff accepted the Thing agreed upon in full Satisfaction of the Sum mentioned in the Condition, and not in full Satisfaction of the Bond ; for the Bond cannot be discharged but by Writing under Hand and Seal. *Cro. Jac. 254.*

But it must be pleaded in Satisfaction of the Condition, and not of the Bond.

Also when Money is to be paid to a Stranger, there, if the Stranger accept of an Horse or any collateral Thing in Satisfaction of the Money, it is no Performance of the Condition, because the Condition is to be strictly performed in that Case.

When Money is to be paid to a Stranger, Acceptance of a collateral Thing in Satisfaction of the Money, is no Performance of the Condition.

But if the Condition be, That a Stranger shall pay to the Oblige, &c. a Sum of Money ; there the Oblige being Party, &c. may receive a Horse, &c. in Satisfaction. *5 Co. 17. Dyer 35, &c.*

But if the Condition be that a Stranger shall pay to the Oblige a Sum of Money, there the Oblige may receive a collateral Thing in Satisfaction.

By Acceptance of Rent of Assignee by Lessor, Privy of Contract is extinguished, and Action of Debt against first Lessee is gone.

upon a Lease made of Tithes?

But after such Acceptance Lessor may maintain an Action of Covenant against first Lessee.

Acceptance of another Bond is naught.

be naught. *Cro. Car. 85. pl. 9.* A Chose in Action cannot be a Satisfaction. *Lit. R. 58.*

Of a Statute Staple after the Day of Payment, no Plea.

Of another Bond in Satisfaction of the first, no Plea.

A Feoffment and Acceptance in Discharge of a Bill, no Plea.

Where Acceptance of Rent dispenses with a Condition, and where not.

Rent, and it is not paid; if he afterwards accepts the Rent, (before Re-entry made) he hath dispensed with the Condition: But altho' that after the Re-entry he accepts the Rent, (due at the Day for which the Demand was made) that shall not dispense with the Condition: *Because, as well before as after his Re-entry, he may bring Debt upon his Lease for Rent; and by his Re-entry the Lease is absolutely avoided.* 3 Rep. 64. Acceptance of the Rent after the Condition broken, if he had Notice of the Breach, bars the Lessor of his Entry; *aliter*, if he had no Notice. See 1 Leon. ib. 626. Moor's Rep. Case 594.

How it shall be in the Case of a Distress.

then there can be no Distress, but only an Action for the Rent. See *Cro. El. 3. pl. 6.*

Acceptance shall not make a void Lease good.

any Time after Breach of the Condition shall make the void Lease good. 3 Rep. 64. b. For the Lease, which is become void by the Breach of the Condition, cannot be made good by any Acceptance afterwards. *Ibid.* See *Cro. El. 528. pl. 57.*

But where the Lease is voidable, it may.

be void: (Because it is an Estate of Freehold created by Livery, it cannot

By Acceptance of Rent of the Assignee by the Lessor, the Privy of the Contract is extinguished, and the Action of Debt against the first Lessee is gone. 1 Saund. 240. 2 Saund. 303, &c. but it is made a *Quere* if it should be Rent reserved

But after such Acceptance the Lessor, or his Assignee, may maintain an Action against the first Lessee upon his Covenant for Payment of Rent. 1 Saund. 241.

The Defendant pleaded Acceptance of another Bond in Discharge of the Bond sued; and held to be naught. *Cro. Car. 85. pl. 9.* A Chose in Action cannot be a Satisfaction. *Lit. R. 58.*

Acceptance of a Statute Staple, after the Day of Payment, is no Plea. *Cro. Car. 56.*

Acceptance of another Bond in Satisfaction of the first, no Plea. *Ibid.*

That he enfeoffed the Paintiff of such Lands in Discharge of the said Bill, which he accepted, held to be no Plea, *Ibid.*

If a Man makes a Lease for Years rendring Rent, upon Condition, That if the Rent be Arrear, he may enter: Here, if the Lessor demands the

Rent, and it is not paid; if he afterwards accepts the Rent, (before Re-entry made) he hath dispensed with the Condition: But altho' that after the Re-entry he accepts the Rent, (due at the Day for which the Demand was made) that shall not dispense with the Condition: *Because, as well before as after his Re-entry, he may bring Debt upon his Lease for Rent; and by his Re-entry the Lease is absolutely avoided.* 3 Rep. 64. Acceptance of the Rent after the Condition broken, if he had Notice of the Breach, bars the Lessor of his Entry; *aliter*, if he had no Notice. See 1 Leon. ib. 626. Moor's Rep. Case 594.

But if the Lease be only voidable he may distrein, for that will amount unto an Affirmance of a Lease; but if the Lease becomes absolutely void, then there can be no Distress, but only an Action for the Rent. See *Cro. El. 3. pl. 6.*

Where the Conclusion of the Condition in a Lease for Years is, *That then the Lease for Years shall be void;* there, no Acceptance of the Rent due at

any Time after Breach of the Condition shall make the void Lease good. 3 Rep. 64. b. For the Lease, which is become void by the Breach of the Condition, cannot be made good by any Acceptance afterwards. *Ibid.* See *Cro. El. 528. pl. 57.*

But in the Case of a Lease for Life, if the Conclusion of the Condition be, *That then the Lease shall*

Acceptance.

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not be determined without Entry :) In such Case, Acceptance of the Rent due at a Day afterwards shall bar the Lessor of his Entry; for this voidable Lease may be affirmed by Acceptance of the Rent: But it is otherwise in Case of a Lease for Years, for there the Lease is absolutely void. 3 Rep. 65. a.

A Man lets a Lease for 21 Years, upon Condition that he should not alien or let any Part of it for above three Years; and if he did, the Lease to be void, and he to re-enter. The Lessee lets for above three Years; the Lessor accepts the Rent of the Assignee, and afterwards re-enters; and it was held to be a plain Breach of the Condition, and that the Acceptance should not dispense with the Condition, seeing that it was that it should be void, so it was absolutely determined. Cro. Car. 511. pl. 6. 512. See Cro. Eliz. 528. pl. 57.

Where the Words are, that if the Lessee doth such an Act, the Lease shall be void, his doing of the Act is an absolute Determination of the Lease.

Acceptance of a Rent of new Tenant is no Bar of a Relief due from a former Tenant; because now by the 21 H. 8. c.... he may avow upon the Land and is not forc'd to avow upon the Person, Mod. Cases, 887.

Acceptance of the Rent of a new Tenant shall not discharge a Relief due from a former Tenant. 21 H. 8. c....

Tenant in Tail makes a Lease for Years not warranted by the Statute, rendring Rent, and dies; the Issue accepts the Rent, this shall bind him. 3 Leon. Case 365.

Where Acceptance of the Rent by the Issue in Tail shall bind him.

So also in the Case of an Infant where he accepts the Rent after his full Age. *ibid.*

So also in the Case of an Infant.

If he that hath a Rent-Service or Rent-Charge, accepts the Rent due at the last Day, and thereof makes an Acquittance; by this all the Arrears due before are discharged. 3 Rep. 65. b.

Where, by an Acquittance, all Arrears before are discharged.

The Acceptance of Rent by the Master of a Body Aggregate, shall not develt any Right, Title, or Interest, which is in him and his Fellows. 11 Rep. 79. a.

Acceptance of Rent by the Master, shall not hurt the College where the Lease is void.

A Right or Title, which any one hath to any Lands or Tenements of any Estate of Inheritance or Freehold, cannot be barred by Acceptance of any manner of collateral Satisfaction; but by Release or Confirmation, or some Act tantamount, it may. 3 Rep. 1. a, b.

Acceptance of Collateral Satisfaction, no Bar to a Title to Lands.

Admission, See Institution.

Admittance, See Copyhold.

Ad quod dampnum, See Ways.

Accessory.

Accessory,

Accessory, See Principal.

Where there may be Accessories, and where not.

In the lowest and highest Offences there are no Accessories, but all are Principals; as in Riots, Routs, Forcible Entries, and other Trespasses Vi & Armis, which are the lowest Offences. And so in the highest Offence, which is Crimen Læsæ Majestatis, there be no Accessories; but in Felonies there are Accessories, both before and after the Fact. Co. Lit. 57. a, b.

When the Principal is not attainted, the Accessory ought to be discharged.

Where the Principal is not attainted, but discharged only by burning in the Hand, the Accessory ought to be discharged without putting to his Book, or burning in the Hand, altho' he were convicted; for he ought not to be condemned but where the Principal is attainted, and not where he is only convicted. Cro. Car. 566. pl. 3. 567; but this seems now to be altered by the Statute of 1 Anne, Sess. 2. cap. 9. See Title Principal.

What shall be Felony in Accessories.
5 Anne, Sess. 2.

And now by a Statute made 5 Anne Regina, it is Enacted, That if any Person shall receive or buy any Goods stolen from another, knowing the same to be stolen; or shall receive, harbour, or conceal any Burglar, Felon or Thief, knowingly, he shall be taken as accessory to the Felony, and being thereof convicted, shall suffer Death as a Felon Convict.

How to be where the Principal can't be taken.

Provided, that if the Principal can't be taken, then the Accessory may be prosecuted for a Misdemeanor, to be punish'd by Fine, Imprisonment, or other corporal Punishment.

What Accessories shall not have their Clergy.
4 & 5 P. & M. cap. 4.

Accessories in Petty Treason, Murder, Robbery, in or near the Highway or Dwelling-House; or wilfully burning any Dwelling-House, or Barn, having Corn in it, being thereof convicted, shall not have the Benefit of their Clergy.

How it stands with Accessories before, and Accessories after, in case of Manslaughter.

Where in an Appeal of Murder the Principal is found guilty of Manslaughter, the Court discharged all the Accessories before the Fact, for to Manslaughter there can be no Accessory before the Fact, but the Accessories after the Fact shall answer as Accessories to the Manslaughter. Mod. Cases, 645.

An Infant may bring it

An Infant may sue an Appeal by Guardians. Mod. Cases. 646.

The Amends must be made of that Thing which is the proper Thing of the Party in which is the Foundation of the Goods &c. In Cases of Assurances the Law varies from Accords, which is in the Statute.

Ac etiam Bille.

Ac etiam Bille, See Latitat. Action.

The Statute made 13 Car. 2. cap. 2. Sess. 2. was the Foundation of inserting the Ac etiam Billæ in Writts.

The Foundation of Ac etiam Bille. 13 Car. 2. cap. 2. Sess. 2.

See the Stat. of 13 Car. 2. Cap. 2. which enjoins the Certainty and true Cause of Action, to be particularly express'd in the Writ, Bill, or Process which holds the Defendant to Bail.

The Cause of Action must be expressed in the Writ, &c.

13 Car. 2. Cap. 2.

An Ac etiam Bille ought not to be made out against any Peer or Peers, or an Executor or Administrator, or upon a Penal Statute, or for any Debt or Assumpsit under 10*l*. nor in Action of Account Render, nor in any Action of Covenant or Trover, unless the Damages are 10*l*. or more: Nor in any Action of Trespass, or for Battery, Wounding or Imprisonment, unless there be an Order of Court for it, or a Warrant under the Hand of one of the Judges of the Court, out of which the Writ issues for that Purpose.

Where Ac etiams to be, and where not.

Accord and Satisfaction.

Accord and Satisfaction, See, Acceptance. Breach. Pleading.

Accord is an Agreement between two at the least, to satisfie an Offence that the one hath made to the other, whether it be a Trespass, or such like Thing, for which he hath agreed to satisfie him; which, if executed, shall be a good Bar in Law to any Suit to be brought for the same Matter.

Accord with Satisfaction, Quid.

Every Tort and Injury begets Discord and Variance, which by Accord and Concord between the Parties is satisfiable; but the Thing which shall be for the Amends, ought to be some Charge to one Party, and profitable to the other.

How Amends must be made.

The Amends must not be made of that Thing which is the proper Thing of the Party injured, as Restitution or Redelivery of his Goods, &c. *Dyer* 356, a. In Cases of Arbitrements the Law varies from Accords, which see in Title Award.

Where Acceptance of a collateral Thing is a good Plea to a Bond, and where not.

If a Man be bound in a Bond, with a Condition to make an Account, or to do other Matter collateral to the Bond; here, Acceptance of another Thing in Satisfaction, is no Plea: But if the Condition be for the Payment of Money; there, Acceptance of a collateral Thing (before the Money due) is a good Satisfaction. *Dyer* 1. a. 9 Co. 79. a. 1 Roll. 455, 456. 3 Lev. 56. Before the Bond forfeited, *Cro. Eliz.* 46, 304. See *Cro. Jac.* 649, 650.

How Acceptance in Satisfaction is to be pleaded.

Note, the Defendant must plead, That the Plaintiff accepted the Thing agreed upon, in full Satisfaction of the Money mentioned in the Condition, and not in full Satisfaction of the Bond; for the Bond cannot be discharged but by Writing under Hand and Seal. *Cro. Jac.* 254, 650. *Yelu.* 192.. *Vide postea.*

Acceptance of a lesser Sum is not good.

Where a Penalty of a Bond is due, Acceptance of a lesser Sum cannot be any Satisfaction of a greater. *Lutw.* 466. 15. *Rep.* 117, a.

Plea, that another Bond was accepted in Satisfaction, naught; because he did not say, That it was given in Satisfaction.

The Defendant pleads, That the Plaintiff had accepted another Bond in Satisfaction; but did not say, that the second Bond was given in Satisfaction, and therefore naught. *Lutw.* 502. See *Cro. El.* 304.

Accord with Satisfaction is no Plea to a Covenant not broken.

Accord with Satisfaction is no Plea to a Covenant not broken; Because the Covenants being created by the Deed, cannot be discharged but by Deed; but it is a good Plea in Satisfaction, and Discharge of the Damages upon a Covenant broken. *Lut.* 359. See 9 R. 43. b.

But is good where broken.

Where Accord executed is a good Plea.

An Accord executed, is a good Plea where Damages only are to be recovered; although the Thing for which the Accord was made, was not worth 2d. *Dyer* 75. Pl. 25, 26. 6 *Rep.* 44. 9 *Rep.* 80. But an Accord executory is not. *Cro. El.* 305. pl. 4.

Where it is a good Plea, and where not.

When a Duty accrues by the Deed in Certainty, as by Covenant, Bill, or Bond, to pay a Sum of Money, there this Duty takes its Effect by Writing, and ought to be discharged by as high a Nature. But when no certain Duty accrues by a Deed, but the Action is for a Tort or Default, &c. for which only Damages are to be recovered, there an Accord with Satisfaction is a good Plea. 6 *Rep.* 43. b.

How to plead an Accord with Satisfaction to a Bond.

Upon a Bond to pay 10 l. at the Birth of the first Child, the Defendant pleaded an Accord before the Child born, to give a Load of Lime in Satisfaction of the Bond, and the Defendant pleads that the Plaintiff accepted the Lime in Satisfaction of the Bond; this is naught, for he ought to say in Satisfaction of the Sum mentioned in the Condition of the Bond. *Cro. Jac.* 254. pl. 9.

Accord and Satisfaction.

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The best way of Pleading of it is by way of Satisfaction, and not by way of Accord; for if it be pleaded by way of Accord, the Defendant ought to plead a precise Execution thereof in the Whole; and if he fail in any Part, his Plea is naught. 9 Rep. 80.

The best way of Pleading it.

But by way of Satisfaction, he may only say, That he paid the Plaintiff such a Sum in full Satisfaction of the Action, which the Plaintiff received, &c. Judgment *fi Actio.* 9 Rep. 80. b.

By way of Satisfaction.

One Promise may be pleaded in Discharge of another before Breach; but after Breach, it cannot be discharged without a Release in Writing. 2 Mod. 44.

Where one Promise may be pleaded in Discharge of another, and where not.

In ancient Time, the Pleading of an Accord without Execution was not good, according to the Resolution in *Peytoe's Case*, 9 Rep. But now the Law is taken to be, that mutual Actions will lie upon such Agreements, and therefore such Plea shall be allowed. *Case against Barber*, Trin. 39. Car. 2. *Jones* 158. *Raym.* 450, 451.

How the pleading of an Accord to be.

Actions will lie upon mutual Agreement.

Where the Defendant pleads Payment of Money, or Delivery of an Horse in Satisfaction, and the Plaintiff traverses that he did not accept the Money or Horse in Satisfaction; this is a good Traverse: *Because the Acceptance is the only material Thing.* Hob. 178. Style 239, 263. 5 Mod. 86, 87.

The Acceptance is the only Thing traversable.

Accord with Satisfaction is a good Plea in Personal Actions, where Damages are only to be recovered, but not in real Actions. 4 Rep. 1. b. 9 Rep. 70. b. But good in an Appeal in *Mabeim*. 9 Rep. 78. b. *Cro. Jac.* 100.

Accord with Satisfaction, where a good Plea, and where not.

But in Case of an Obligation there is a Duty certain, and therefore it is no Plea, either before or after the Day of Payment. *Cro. Jac.* 100.

Where there is a Duty certain, it is no Plea.

Assumpsit to pay Money at several Days. Defendant pleads, that he paid Part before the Day, and that the Plaintiff had accepted Goods for the Residue before it was due: Upon which the Plaintiff demurs; because the Defendant ought to have pleaded, that he had given the Goods in Satisfaction, &c. according to *Pinnell's Case*, 5 Rep. 117. and the Plaintiff had Judgment.

How to be pleaded in an Assumpsit.

In all Actions which suppose a Wrong *Vi & armis*, where a *Capias* and *Exigent* lay at the Common Law, there an Accord is a good Plea. 9 Rep. 77. b. *Peytoe's Case.* *Dyer* 356.

It's a good Plea in all Actions which suppose a Tort.

Actions.

Actions.

Actions, See

Case.

Conspiracy.

Disceit.

Ruſance.

Slander.

Actio, Quid.

In real Actions ſeveral Lands by ſeveral Titles can't be demanded in the ſame Writ.

But in perſonal Actions ſeveral Wrongs and Cauſes of Action may.

Action at Common Law and upon a Statute can't be join'd.

Action for Debt and Detinue may.

Actions of ſeveral Natures can't be join'd.

Nor *Trover* and *Assumpſit*.

When there is Cauſe of Action in two Counties, Plaintiff may lay the Action in which he pleaſes.

All real and mix'd Actions are local, and muſt be laid where the Land lieth.

Places where the Wrong was done, muſt be ſet down in the Declaration.

A

Actio nihil aliud eſt quam juſ proſequendi in judicium quod ſibi debetur. Co. Litt. 255. a.

In real Actions where the Title is ſet forth in the Writ, ſeveral Lands by ſeveral Titles cannot be demanded in the ſame Writ. *Trin. 7 Jac. vid. 8 Co. 87. b.*

In perſonal Actions ſeveral Wrongs and Cauſes of Action may be comprehended in the ſame Writ. *8 Co. 87. b. Jenk. Rep. 211.*

But an Action at Common Law and upon a Statute can't be join'd in the ſame Writ. *Jenk. ibid.*

Action for Debt and Detinue may be join'd, for they are of the ſame Nature, as in *Raſt. Ent. 150. pl. 13. 174. pl. 15.*

Otherwiſe of Actions of ſeveral Natures, as Debt, Treaſpaſs, Debt and Account. *Bro. Joinder in Action. 97.*

Trover and *Assumpſit* lye not together. *3 Lev. 99.*

When there is a Tort or Cauſe of Action in two Counties, 'tis at the Plaintiff's Election to lay the Action in which County he pleaſes. *Evone v. Theobald, Mich. 18. Car. 2.*

All real and mix'd Actions, as Waſte, Ejectment, &c. muſt be laid in the ſame County where the Land lieth, for they are local Actions; and ſo are Treaſpaſſes of *quare clauſum fregit*, and the ſame

Places where the Wrong was done, muſt be ſet down in the Declaration.

But all personal Actions, and all transitory Actions, as Debt, Detinue, Assault, Annuity, Account, &c. may be brought in any County, and laid in any Place where the Plaintiff pleaseth, except it be against an Officer, as is before observed. *Vid. Co. Litt. 282, 283.*

What Actions are local, and what transitory, *vide 1 Saund. 238, 239, 240, 241.*

Where two Men who have an entire joint Damage, may have a joint Action upon the Case, although their Interests are several, *2 Saund. 116.*

Where part of a Cause of Action ariseth in one County and part in another, the Party hath Election to bring it in which County he pleases. *1 Lev. 286. Vid. 7 Co. 1.*

Either an Action upon the Case of Trover and Conversion, or an Action of Detinue, at the Election of the Plaintiff, may be brought for Goods detained from him. *22 Car. 1. B. R.* For it is but Justice that the Party should recover his Goods detained in Specie, if they may be had, or else Damages sustained for detaining them, at his Election; for the Defendant is not injured thereby.

An Action of Trover and Conversion is in its Nature but an Action upon the Case to recover Damages (*Mich. 22 Car. 1. B. R.*) and is not brought to recover the Goods in Specie. But in a Detinue you recover the Things detained in Specie or the Value of them.

An Action doth lie by the Statute against the Court of Admiralty for holding Plea of a Matter which is not within their Jurisdiction, (*Mich. 22 C. 1. B. R.*) and justly; for every Jurisdiction ought to be kept within its own Bounds; and if any one be injur'd by transgressing herein, the Common Law will relieve the Party injured thereby, and cause Satisfaction to be made for this Injury.

There is a Difference betwixt bringing of an Action and the laying of an Action. (*Mich. 22 Car. 1. B. R.*)

The Cause for bringing an Action upon the Case for the speaking of Words against one, is the temporal Loss or Damage which may accrue to the Party against whom they are spoken, by the speaking of them, and not the Words themselves. (*Mich. 22 Car. 1. B. R.*) For the Law regards Words no farther than they may tend to the Damage of another, either in his Person or his Estate.

In a Trial upon a Trespass and Ejectment touching the Title of the Land in Question, altho' the Verdict pass against the Plaintiff, yet he may bring

All Personal Actions are transitory, and may be laid where the Plaintiff pleaseth, except against an Officer.

What Actions are local, what transitory, and where two may have a joint Action.

Where part of the Cause of Action rises in one County and part in another, the Plaintiff may lay it in which he pleases.

Either Trover or Detinue, at Plaintiff's Election, lies for Goods detain'd from him.

Trover in its Nature is an Action on the Case for Damages. But in Detinue you recover in Specie.

Action lies by the Statute against Court of Admiralty for holding Plea of a Matter out of their Jurisdiction.

Difference betwixt bringing and laying an Action.

Temporal Loss which may accrue thereby, and not the Words themselves, is the Cause for bringing an Action of the Case for Words.

In Trespass and Ejectment, after Trial, the Plaintiff may bring a new

a new

a new Action for the same, for such Trials are not final. *Pasch. 23 C. 1. B. R.* because the Land is not recovered in them, but the Possession only which he had at the time of the Ejectment made.

In Case for Words whereof some are actionable, some not, Action lies.

If one bring an Action upon the Case for divers Words spoken, whereof some are actionable, and some are not, yet the Action lies (*Trin. 24 C. 1. B. R.*) for them that are actionable; and as to them only Damages shall be given if it pass for the Plaintiff; but if entire Damages shall be given by the Jury, as well for those which are actionable, as for those which are not; there, the whole Verdict is void, provided the Words are laid to be spoken at several times.

Two several Debts may be join'd in one Action, and so of other personal Actions of the same Nature; but not so of real Actions.

One may join two Debts due upon two several Obligations in one Action; and so it is of other personal Actions which are of the same Nature; but it cannot be done in real Actions, in regard of the different Natures of them, and the several kinds of Defence that may be made in them. *6 Febr. 1650. B. S.*

Action must be commenced on Entries to avoid Fines within one Year after the Entry, or else the Entry not good.

By the late Act for Amendment of the Law Entries and Claims to avoid Fines are limited so as not to be sufficient, unless upon such Entry or Claim an Action shall be commenced within one Year next after the making of such Entry or Claim, and prosecuted with Effect.

Suits in Admiralty for Seamen's Wages must be brought within six Years after Cause of Action, unless the Plaintiff be within Age, Feme Covert, *non compos mentis*, in Prison, or beyond Seas.

Also that Suits in the Admiralty for Seamen's Wages shall be commenced and sued within six Years next after the Cause of such Suits or Actions shall accrue, and not after.

Provided, That if any Person, so intituled to any such Action for Seamen's Wages, shall at the time when the Cause of any such Action accrues, be fallen or come within the Age of 21 Years, Feme Covert, *non compos mentis*, imprison'd, or beyond the Seas, that then such Person shall be at liberty to bring their Action within six Years next after their coming to or being of full Age, discover, of sane Memory, at large, and return'd from beyond the Seas.

If Defendant be beyond Seas, then Plaintiff may bring his Action after their Return within such Times as limited by this Act, and that of *21 Jac. 1. c. 16.*

And further, that if any Person against whom there shall be any such Cause of Action for Seamen's Wages, or any Cause of Action of Trespass, Detinue, Action *sur Trover*, or Replevin for taking away Goods or Cattle, or of Actions of Account, or upon the Case, or of Debt grounded upon any Lending or Contract without Specialty, of Debt for Arrearages of Rent, or Assault, Menace, Battery, Wounding and Imprisonment, or any of them, shall at the time when the Action accrues, be gone beyond the Seas, that the Persons entitled to such Actions, have liberty to bring their respective Suits against such Persons after their Return from beyond the Seas, within such Times as are respectively limited for the bringing of such Actions before by this Act, and by the Act made *21 Jac. 1. c. 16.*

Actions.

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By which Statute of Jac. 1. All Actions upon the Case (other than for Slander) Actions for Account (other than concern Merchandize) Actions of Trespass, Debt, Detinue, Trover and Replevin, shall be commenced within six Years after the Cause of such Action, and not after.

By 21 Jac. 1. All Actions on the Case other than for Slander, Actions of Account, other than for Merchandize, Trespass, Debt, Detinue, Trover and Replevin, must be commenced in six Years after Cause of Action, and not after.

All Actions of Trespass, of Assault, Battery, Wounding and Imprisonment, within four Years after the Cause of Action, and not after.

All Actions of Trespass, Assault and Imprisonment within 4 Years.

All Actions upon the Case for Words within two Years after the Words spoken, and not after.

All Actions for Words in 2 Years, and not after.

And the Right of Action is saved to an Infant, Feme Covert, *non compos mentis*, a Person imprison'd or beyond Sea, so as they commence their Suits within the Times above limited respectively, after their Imperfections removed.

But Right of Action is saved to Infants, Femmes covert, *non compos mentis*, those in Prison or beyond the Seas.

Provided also, That if in any such Actions Judgment be given for the Plaintiff, and the same be reversed by Error, or a Verdict pass for him, and upon Motion in Arrest of Judgment, it is given against him, or if the Defendant be outlaw'd in the Suit, and after reverse the Outlawry; in these Cases, the Plaintiff, his Heirs, Executors or Administrators, may commence a new Action within a Year after such Judgment reversed, or given against the Plaintiff, or Outlawry so reversed, and not after.

As also, If Judgment, be revers'd by Writ of Error, or Motion in Arrest of Judgment, or Defendant outlaw'd.

If one takes out a *Latitat* within the Time limited by the Statute for the Limitation of Actions, it is a good bringing of the Action in due Time; and he is not barred by the Statute, although he do not declare against the Party within the Time limited by the Statute. *Mich. 1649. B. S.* For the taking out the Writ of *Latitat* is in the Nature of filing an Original, and by doing it the Suit is commenced within the Meaning of the Statute.

Taking out a *Latitat* is a good bringing of the Action within the Statute.

But Note, the Party who sues out a *Latitat* must have a *Non est inventus* returned by the Sheriff, and then he must enter his Writ upon the Roll, and afterwards file it; otherwise the Suing it out will avail him nothing.

But Plaintiff must get a *Non est inventus* return'd, and enter his *latitat* on the Roll and file it, otherwise it will not avail.

An Action of the Case does lie against one that does arrest another without Cause. *Pasch. 1650. 6 Maii. B. S.* For there is *damnum & injuria* to the Party arrested by the doing of it.

An Action of the Case lies for Arresting another without Cause.

Right and Wrong are the Mother of all Actions; and therefore no Action can be brought without the having of a Right, and the laying of a Wrong done before the Action. *Hob. 198.* Also *injuria* and *damnum* are the Foundations of Actions on the Case. *March 114, 194.*

Right and Wrong the Mother of all Actions.

Where a Wrong is *ex Maleficio*, it dies with the Person; but where it is *ex contractu*, it doth not. *March 14.*

Where it dies with the Person, and where not.

Case lies for every
Falsity.

Where an Action vest-
ed, cannot be taken away.

A Man cannot have
an Action where he can
have no Effect of it.

The Law gives a Re-
medy for a Wrong or
Injury.

No Punishment shall
follow a lawful ill Ac-
cident.

Where by Law a Man hath several Remedies, he may make Use of
which he will. *Co. Lit. 145. a.*

Where several Causes
may be comprehended
in one Writ.

8 Rep. 87. b. 5 Mod. 91, 92. So also Debt for Rent, upon several
Leases. 8 Rep. 88. a.

Where not.

several Pleas, but therein are different Proceſs; as in the one, Sum-
mons, Attachment, &c. and in the other, Attachment. 1 Vent. 166.
5 Mod. 91, 92.

Where the Convey-
ance to the Action may
be traversed.

veyance to the Action, being a Thing material, is traversable. *Ibid.*

The Consideration is
not traversable.

Nor the Conversion
in Trover.

No Title ought to be
shewn to a Fair, where it
is alledged only as a Con-
veyance to the Action.

Judgment that he
Curia. It is but a
thereof as to the

Possession is a good
Title against a tort feazor.

In Transitory Actions,
the Tort may be alledged
any where.

(except in the Case of Officers, by the Statute of 21 Jac. cap. 12. of
which see *postea*) and the Place cannot be travers'd without special
Cause of Justification local. *Lutw. 1434, 1437, 1438, 1450, 1451.*

For every Falsity an Action on the Case is main-
tainable. *Cro. El. 794.*

The Act of a Third Person shall not take away
an Action once vested. 1 Leon. Case 321.

Where a Man cannot have the Effect of his
Suit, it is vain to bring an Action. 1 Leon. Case
402. fol. 293.

Where Injury or Wrong is done to any Body,
the Law gives Remedy to the Party grieved.
2 Leon. Case 116.

Where by doing a lawful Act, by a Mishap a
Damage cometh to another against the Will of the
Doer, no Punishment shall follow. 2 Leon. Case 116.

Where by Law a Man hath several Remedies, he may make Use of
which he will. *Co. Lit. 145. a.*

In Personal Actions, several Wrongs and Causes
of Action of the same Nature may be comprehend-
ed in the same Writ; as one Action of Trespass
will lie for several Trespasses done at several Times.

So also Debt for Rent, upon several

Actions founded both upon a Contract and Tort,
cannot be joined in one, for they require not only

several Pleas, but therein are different Proceſs; as in the one, Sum-
mons, Attachment, &c. and in the other, Attachment. 1 Vent. 166.
5 Mod. 91, 92.

Where the Conveyance to the Action is that
which entitles the Plaintiff to his Action, it may
be traversed. *Cro. El. 169, 201. pl. 27.* In every Acti-
on wherein a Wager of Law lies not, the Con-
veyance to the Action, being a Thing material, is traversable. *Ibid.*

The Consideration in an Action on the Case is
material, but not traversable.

So in Trover the Conversion is material, but
not traversable. *Ibid.*

The Plaintiff declares that he was seised in Fee in
the Manor of H. and of a Fair to be held there
every *Ascension-day*; and that the Defendant di-
sturbed him to take Toll: And moved in Arrest of
Judgment that he shews not any Title, by Grant or Prescription.
Curia. It is but a Conveyance to the Action, and not any Claim
thereof as to the Right. *Cro. Jac. 42. pl. 9.* Also it is a Possessory
Action, and is a sufficient Title against a Stranger,
without making of any special Title. *Cro. Jac. 122. pl.*
7, 123.

In Actions Transitory, as Battery, Taking of
Goods, &c. the Plaintiff may alledge the Tort made,
not only in another Vill, but in another County;
(except in the Case of Officers, by the Statute of 21 Jac. cap. 12. of
which see *postea*) and the Place cannot be travers'd without special
Cause of Justification local. *Lutw. 1434, 1437, 1438, 1450, 1451.*

Where

Where Actions lie for vexatious Arrests in Inferior Courts, see *Lam. 1571, 1572.*

Where a Man sues another for a just Debt; there, altho' by this Suit he draws all his Creditors upon him, and perhaps undoes him; yet no Action on the Case lies against him, because it was a lawful Act. But where one commences a Suit against one in the Name of another without his Privy, this is Maintenance, which is a tortious Act, and therefore an Action will lie. *March 48.*

It lies against a Parson for the not keeping of a Bull and Boar according to the Custom of the Parish: And held also that every Inhabitant who hath Prejudice by the not keeping of a Bull and Boar, may have it. *Cro. El. 369. pl. 4. Mod. Cases, no Plea to it.*

If a Man delivers Goods to a common Carrier, to carry to a certain Place; if he loses them, Case lies against him by the Custom of the Realm, for he ought to keep them safely, but Trover will not lie. *B. R.* And although no common Carrier, yet if he takes Hire, he may be charged upon a special Assumpsit. *Cro. Jac. 263. Note. Where Hire is taken, a Promise is implied. Vide 1 Sid. 245. 1 Keb. 852. pl. 57. 870. pl. 19.*

A Man delivers Goods to a common Carrier to carry, who is robb'd of them; yet he shall be charged for them: Because he had Hire for them, and so implicitly took upon him the safe Delivery of them. *2 Saund. 280.*

A Man delivers a Box to a Carrier to carry; he asks what is in it? He tells him, A Book and Tobacco, whereas there was 100 l. besides; yet if the Carrier be robb'd, he shall answer for the Money: For the Plaintiff was not bound to tell him all the Particulars in the Box, and it was on the Carrier's Part to make a special Acceptance. *See 1 Vent. 238.*

Case lies as well against a Common Bargemen without a special Promise, as against a Common Carrier by Land. *Cro. Jac. 330. pl. 9. 331.* But Trover cannot be joined in it. *5 Mod. 91, 92, 93.*

If my Fire by Misfortune burns the Goods of another, he shall have an Action on the Case against me. *2 H. 4. 18.*

A leases to B. for Years by Indenture: B. lets this to C. by Parol at Will. C. negligently suffers it to be burnt down; an Action of the Case lies for B. against him: Because B. cannot have Waste against C. and B. shall be liable to pay treble Damages to A. for the Injury done by C. *4 Jac. 2. B. R. Cro. El. 461. pl. 12 accord.* But it lies not for the

Actions for vexatious Arrests.

It will lie for a tortious Act.

It lies against a Parson for not keeping of a Bull and Boar according to Custom.

481. Non Cnl. is

Case lies against a common Carrier who loses Goods.

M. 14. Car. 2.

So also against any other Person who takes Hire.

See Hob. 17, 18.

A common Carrier is robb'd, he must pay for the Goods.

4 R. 84. a.

So for Money lost, with other Goods, tho' he knew not of the Money.

For the Plaintiff See 1 Vent. 238.

It lies against a Common Bargeman, as well as against a Common Carrier.

But Trover must not be joined in it.

Case lies for Damage done by Fire.

Where Case lies against Tenant at Will, for negligently keeping of his Fire.

But it lies not for the Lessor

Lessor against his Tenant at Will, or for Years by Parol, because it is the Lessor's Folly not to bind the Lessee by Covenant to repair and uphold, *Cr. Rep. 13. b. Cro. El. 777. pl. 10. 784.*

The Plaintiff brings Case against his Lessee at Will, for committing Waste, and held that it lies as well as Trespass. The Plaintiff says that he was and yet is possessed of a Lease for divers Years, then and yet to come, of an House, and let it to the Defendant for six Months; and after the six Months ended he permitted him to stay in two Months longer, during which Time he pulled down the Windows and other Parts of the House, whereupon he brought this Action; and tho' it was moved that it ought to have been an Action of Trespass, as *Lit. Sect. 71.* is;

Where he counts Destruction, either Trespass or Case;

because subject to an Action of Waste.

It lies for diverting of an ancient Water-Course to a Mill.

Need not lay a Title.

otherwise: But adjudged for the Plaintiff, for it being laid to be *antiquus aqueductus*, and that the Water *currere consuevisset & debuisset*, it

currere consuevisset & debuisset is sufficient, especially against a Stranger.

So also for diverting of a Water-Course which used to water his Land, and for his Cattle to drink.

Doth not say that he was seized at the time of the Tort.

ing, and held to be ill. *Cro. El. 751. pl. 8.* And there is a Difference between the charging of a Tort-Feazor and the Tenant of the Land; for to charge the Ter-tenant, you must make a Title by Grant or Prescription, but none need be made against a Tort-Feazor. *Mod. Cases, 313.*

The Plaintiff says, That he was possess'd of an House for a Term yet in being, and let it to the Defendant for a Year, and he suffer'd it to be burnt; and moved that the Plaintiff hath not shewn that he hath any Reversion in him: But it appearing upon the whole Matter, that the Action was brought after the Year expired, and the Term was then in being, Judgment was given for the Plaintiff.

A Man fires his Furzes in his own Close, and they fire the Plaintiff's Close adjoining thereto; and he brings his Action against the Defendant, upon the Custom of England, for not safely and

A Man sets fire to his own Furzes, which fire his Neighbour's: Action on the Case lies against him.

securely

securely keeping of his Fire: And after a Verdict, the Plaintiff (notwithstanding a Motion in Arrest of Judgment) had his Judgment that the Action well lay, for it was as much his Fire in the Field as in his House, in the Eye of the Law. *Mich. 9 Will. 3. B. R. Turberville & Stamp.*

One Title Conspiracy, where Actions will lie for maliciously indicting.

Malicious Indicting

Where an Action is brought against a Constable, for a Thing done by him by Vertue of his Office; by the Statute of 21 Jac. cap. 12. it must be brought against him in the County where he is Constable; and the Fact was done, and not elsewhere: And he may plead the general Issue, and give the special Matter in Evidence. And if the Plaintiff be nonsuited, or the Defendant be found not guilty, he shall have double Costs.

Where a Constable is to be sued.

21 Jac. 1. cap. 12.

In Actions of indebitatus assumpsit, or Trover, if the Defendant comes before the Rules for Pleading are out, or Plea pleaded, and makes Oath, That if any such Promise was made, or Battery committed, or Conversion, &c. as in the Declaration is mentioned, that the same was made or committed in the County of S. (*viz.* another County than that where the Action is laid) and not elsewhere, out of the said County of S. And upon the Attorney's Oath, That he received the Declaration since the last Term, or but six Days, or less, before the End of the last Term, the Court will (unless very good Cause be shewn to that contrary) alter the Venue into the County where the Defendant swears that the Fact was committed: But if the Plaintiff will consent to give no Evidence but what arises in the County where his Action is laid; or if he will consent to be nonsuited, if he doth not give some Evidence arising in that County; then the Court will (if they think fit) discharge such Rule for changing the Venue.

In Transitory Actions, upon an Affidavit of the Defendant and his Attorney, before Rules for Pleading are out, that such Action arose in another County, the Court will alter the Venue into that County where the Fact was committed.

Actions arising out of the Jurisdictions of the Corporations, ought not to be brought in the Corporation-Courts; for their Privileges do only extend to the Trial of such Actions which do arise within their own Jurisdictions, and not to any others. And they ought not, by Colour of their particular Jurisdictions, to entrench upon the Common Law, but keep themselves within their own Bounds. *Lutw. 1571, 1572.*

Where Actions arising out of Corporations ought to be brought.

An Action will not lie for arresting of a Man without a Cause, unless it be for an exorbitant Sum. *Ita quod defendens sciens,* that the Plaintiff could not find Bail for so great a Sum, did maliciously cause him to be arrested. *Hill. 9 Will. 1 Saund. 228. Lutw. 1571, 1572.*

Where an Action lies for arresting of a Man without a Cause.

An Action lies upon the Statute of 8 Eliz. c. 2. Sect. 4. for suing an Action in another's Name without his Privy, being duly proved by two Witnesses; the Proof shall be in the same Action. *Cro. Jac. 188.*

An Action lies for suing an Action in another's Name sans Privy. 8 Eliz. c. 2. Sect. 4.

For maliciously out-
lawing of the Plaintiff.

It lies against an Ap-
parator for a malicious
Citation.

was no such Fame,
Charge. *Cro. Car.*

For tearing off a Seal
from a Deed.

Case lies for a false
Return of a Summons in
the Spiritual Court.

Case lies for speaking
of Words to the Damage
of a Man's Trade, or Loss
of Marriage.

Special Damages must
be proved, if laid.

Words, he shall be nonsuited;
*per opinionem Capital Justic. Mich. 34
Car. 2. Et per alios.*

If the Words not acti-
onable without it,

Plaintiff shall recover,
otherwise not.

Case for hindering of
a Tenant to view, if there
be any Waste made.

Repairing, the Defendant would not suffer him to enter and view,
per quod, &c. And moved, that it was not shewn what Waste was
done, and that such an Action was never brought; but adjudged that
the Action well lay. *Cro. Jac. 478. pl. 12.*

It lies for threatening
a Man's Servants and
Customers, who come
and buy of him.

It lies for Disturbance
in a Seat in the Church.

So also for maliciously outlawing of a Man,
whereby he became very much damnified: And
how and where the Action is to be brought, see

4 Leon. Case 137.

It lies against an Apparator for falsely and ma-
liciously, without any Colour or Cause, citing of
him to the Consistory-Court upon pretence of
Fame of Incontinency with one A. B. where there
whereof he was cleared at his great Expence and

Charge. Cro. Car. 291. pl. 1. Moor, Case 1126.

An Action lies against a Man for tearing off the
Seal from a Deed, whereby A. granted him an
Annuity. *Cro. Jac. 255. pl. 11.*

It lies against a Man for falsely returning upon
a Monition, that he had admonish'd him, whereas
he was never warn'd; whereupon he was excom-
municated, and was disabled to sue. *Cro. Jac. 351.
pl. 4. 356.*

An Action upon the Case doth lie for speaking
of Words against a Man, by Reason of which he
lost his Marriage, or his Trade, &c. For thereby
he may receive Damage, in Respect of the Increase
of his Estate, and Loss of his Marriage, had not the speaking of the

Words prevented it. But where Special Damage is laid in the Decla-
ration, as Loss of Trade, &c. if the Plaintiff doth
not, at the Trial of his Cause, prove his Special
Damages laid in his Declaration, as well as his

Words, he shall be nonsuited; *per opinionem Capital Justic. Mich. 34
Car. 2. Et per alios.* If the Words in the Declaration are found to be
spoken, but no Special Damage is found; then if
the Words are actionable without such Special Da-
mage, the Plaintiff shall recover, otherwise not.
And this I have known since agreed by the Court.

Case for that the Defendant being Lessee for
Years, the Reversion in Fee to the Plaintiff, and
the Plaintiff coming to the House to see if there
was any Waste committed, or any Defect in the

Repairing, the Defendant would not suffer him to enter and view,
per quod, &c. And moved, that it was not shewn what Waste was
done, and that such an Action was never brought; but adjudged that
the Action well lay. *Cro. Jac. 478. pl. 12.*

Case lies for threatening to maim and beat his
Workmen, and all his Customers, that shall come
to his Pits to buy Stones of him. *Cro. Jac. 467.
pl. 3.*

It lies for disturbing a Man in his Seat in a
Church. *Cro. Jac. 605, 606.*

Where

Actions.

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Where there are two Closes contiguous, and one ought to repair the Fences against the other, so as the Cattle in the Plaintiff's Close should not come into the Defendant's Close; and that the Defendant did not repair the Fences, whereby his Cattle went out of his own Close, and from thence into the Close of A. B. who sued him in Trespass, and recovered against him; and lies. *Cro. Jac. 665. pl. 19.*

Cafe for not repairing of his Fence, whereby the Plaintiff's Cattle came into the Defendant's Ground, and from thence into the Ground of J. S. who impounded them.

Cafe lies for suing out of Execution against the Bail, after the Principal had render'd himself, and the Recognizance was discharged. *Cro. Jac. 667. pl. 1.*

It lies for suing out Execution against the Bail after the Defendant had render'd himself, and the Recognizance was discharged.

It lies for disturbing a Bishop's Steward to keep the Courts. *Cro. Car. 16. pl. 8.*

For Disturbance in keeping of Courts.

Upon a Special Promise, in Consideration that A. will permit B. to occupy and enjoy his Land for a Year, he will pay him 5 l. for it; an Action of the Cafe will lie here: But the Law will not raise any Promise upon an *Indebitatus Assumpsit*, or *Quantum meruit pro occupatione terra*, &c. Nor can the Plaintiff recover upon an *Indebitatus* or *Quantum Meruit*, for the Enjoyment of an House or Land, unless a particular Agreement to that Purpose be proved at the Trial of the Cause. See *Hard. R. 366.* See also Title *Assumpsit*.

Where Cafe will lie upon a Promise to occupy and enjoy an House, but general *Indebitatus* will not lie.

Upon an *Infirmul Computassent*, the Plaintiff must be sure to prove the Day of the Account, and Sum certain agreed upon, otherwise he will be nonsuited.

How a Declaration on an *Infirmul Computassent* is to be proved.

An Action upon the Cafe lies for calling one Whore in *London*: But this is by the general Custom of the City. The Court have since been divided in Opinion in this Cafe: But it is now settled, That the Action is maintainable in the Courts of *London* only. And if the Action be removed by *Habeas Corpus*, a *Procedendo* shall be granted. And it is made use of as the common Suggestion for a Prohibition on a Libel in the Ecclesiastical Court for calling one Whore in *London*.

Cafe lies for calling of a Woman Whore, by the Custom of *London*.

In the Courts of *London* only.

It lies for an Inn-keeper against a Tallow-chandler for erecting and using of a Tallow-Furnace so near his House, that many of his Guests left the House, and many of his Family became unhealthful. *Cro. Car. 510. pl. 3.*

For which a *Procedendo* lies.

It lies for an Inn-keeper against a Tallow-chandler.

In an Action for stopping of a Way by Prescription from one Man's Ground to another Man's, if the Plaintiff or Defendant have but an Estate for Years, then Cafe will lie; but if a Freehold, then an Affize. 3 *Leon. Cafe 31.*

Where Cafe lies for stopping of a Way, and where an Affize.

How to prescribe for an Horse-way, and how for a Cart-way.

Case lies for a Private, not for a Publick Nuisance, but an Indictment only.

Where a Man digs a Ditch in the Highway, he who receives Damage may have his Action.

334. 1 Rol. Rep. 124. 4 Co. 18. a. Moore 180. Pl. 321. Cro. Jac. 491.

But if it be in a Common, except a Commoner receives Damage, it lies not.

Where an Action must be brought with a *Simul cum*.

their particular Names, and against them that are not arrested with a *Simul cum*. A. B. C. D. &c. viz. To charge them that are arrested,

How their Evidence to be taken off.

of them named in the Writ, and proved to be Trespassers, otherwise their Evidence will not be taken off, but they may be sworn to give Evidence for the Defendant.

Where Debt may be brought for Rent.

A Horse is stolen at Grass, the Inn-keeper shall not answer for him.

But he shall, if he puts the Horse to Grass without Order for it.

the Inn-keeper shall

Where a Man prescribes to have as well a Foot-way as an Horse-way, *pro omnibus & omnimodis carriagiis*, he cannot by this Prescription have a Cart-way, 3 Leon. Case 31.

An Action upon the Case lies for a Private, but not a Publick Nuisance: But for a Publick Nuisance an Indictment only lies, because the Nation is concerned, in which all Private Interests are included. And besides, if an Action would lie, every Man may bring an Action, and by that Means ruin the Defendant. See *Co. Litt.* 56. a. 4 R. 18 a. 104. a. 9 R. 113. a. See *Cro. El.* 664. But where any Man hath a Special Damage, it lies. *Cro. Jac.* 446. pl. 25.

But if a Man digs a Ditch in the Highway, into which my Servant falls and breaks his Leg, or my Horse falls into it; or if I have any other Particular or Special Damage, an Action lies. 2 Bulstr.

Case was brought for digging of a Pit in a Common, into which Common his Mare straying, fell into the Pit and died, the Declaration held not good after the Verdict. For when the Mare was straying, and he shews not any Right to the Common, the digging of the Pit is lawful, as against him. *Cro. Jac.* 159.

Where a joint Action of Trespas doth lie against divers Persons, of whom some can be arrested, and others cannot, there the Action may be brought against them that are arrested, and do appear by their particular Names, and against them that are not arrested with a *Simul cum*. A. B. C. D. &c. viz. To charge them that are arrested, but not the Parties in the *Simul cum*, any further, than only to take off their Evidence at the Trial.

Note, The Parties in the *Simul cum* must be all of them named in the Writ, and proved to be Trespassers, otherwise their Evidence will not be taken off, but they may be sworn to give Evidence for the Defendant.

An Action of Debt for Rent upon an Indenture, may be brought by the Lessor against the Lessee, either in the County where the Lease was made, or in the County where the Lands let do lie: Because there is Privity of Contract between the Lessor and Lessee. But where there is not any Privity of Contract between the Lessor and Lessee, but only Privity of Estate, as in the Case of an Assignee, there the Action is local, and must be brought only where the Lands lie.

A Man comes to an Inn and delivers his Horse to the Ostler, and orders him to put him to Grass, and the Horse is stolen; there the Inn-keeper shall not answer for the Horse. 8 Rep. 32 a.

But where an Inn-keeper of his own head, without the Direction of the Master or his Servant, puts the Horse to Grass, which is stolen, there the Inn-keeper shall answer it. 4 Leon. Case 196.

Actions.

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If a Man be robbed in the House of an Inn-keeper who keeps a common Inn, he shall answer for it. 8 Rep. 32. a.

In the Case of a common Inn.

A Servant is robbed in an Inn, the Master brings the Action, and held that it lies. *Latch* 126.

The Master shall bring the Action where his Servant is robbed in an Inn.

The Words in the Writ, *ad hospitandum homines*, are intended only Travellers, and not Neighbours or Friends, which are not travelling. 8 Rep. 32.

For Travellers only, not Neighbours.

A Man who was a Guest in an Inn, went from thence to *London*, left his Goods with the Landlord, and said that he would return in three or four Days; he returned in three Days, and his Goods were stolen: The Inn-keeper shall not be chargeable; for he is not any Guest during the Time of his Absence, and the Inn-keeper is not chargeable, if there be not a Special Promise for the safe Keeping. *Cro. Jac.* 188. pl. 9.

Where a Man shall be said to be a Guest, to charge an Inn-keeper, and where not.

But if a Man comes to an Inn, and leaves his Horses or Goods, and goes into the Town, and returns, and in the Interim his Goods are stolen, he is a Guest, and shall have his Action. *Cro. Jac.* 189.

Where a Guest, the Inn-keeper is chargeable.

A Servant is robbed of his Master's Money in an Inn, the Master, and not the Servant, must bring the Action. *Cro. Jac.* 224. pl. 4. 225.

A Servant is robbed in an Inn, the Master must bring the Action.

The Inn-keeper is answerable by Law for nothing which is out of his Inn. 8 Rep. 32. b.

Answerable only for what is in his Inn.

If the Servant of the Guest, or his Companion commits the Robbery, the Inn-keeper shall not be answerable; but if he puts one to lie with him that robs him, then he shall. 8 Rep. 33. a. Directions how to declare upon the Writ, and much good Matter throughout the whole Case. 8 Rep.

Where the Servant or Companion of the Guest robs him.

Directions how to count upon the Writ.

32, 33. See for these Matters, *Danvers's Abr.* from *Fol.* 14. to *Fol.* 18.

The Husband may bring an Action alone for scandalous Words spoken against him and his Wife, and recover; and yet afterwards may bring another Action for to recover Damages done to his Wife by speaking of the same Words: For the Husband and Wife are both particularly damned by the speaking of the Words: And this shall not be said to be a double Vexation. *Quare* this, for the Law seems otherwise, unless the Husband be an Inn-keeper or Trader, and hath particular Special Damage by Words spoken of his Wife; and in this Case also it is doubtful, because, generally speaking, where the Right of Action survives to the Wife upon the Death of her Husband, there both must join. See *Cro. Car.* 89. *Cro. Jac.* 501. 518. 3 *Mod.* 120. 1 *Sid.* 346. 2 *Roll. Rep.* 51.

Where Husband and Wife must join in an Action for Words.

And where the Husband may sue solely.

One may have an Action upon the Statute of 5 *Eliz. cap.* 9. *sect.* 12. against a Witness who doth not appear after he is served with a Process out of any Court of Record to appear at the Trial, and

Action lies against a Witness for not appearing to give Evidence. 5 *Eliz. cap.* 9. *sect.* 12.

hath

hath had his Charges tendered him according to his Calling, having Regard to the Distance of the Place, necessary to be allowed, and he do not attend according to the Tenor of the Process, having no lawful or reasonable Impediment, shall forfeit to the Party injured thereby the Sum of 10 *l.* and such further Recompence, as by the Judge of the Court out of which the said Process issued, shall be awarded, according to the Loss and Hindrance sustained by the Party who procured such Process. See Title *Costs and Charges*.

What Evidence to be given at the Trial.

Note, You must be sure at the Trial to make good Proof of serving the *Subpœna*, viz. by leaving of a true Copy of the Writ in Writing with the Party himself, and shewing of the *Subpœna*, under the Seal of the Court, to him at the same Time; and also by leaving with him a Shilling or more according to the Quality of the Person, and Distance of the Place where the Evidence is to be given.

The Plaintiff must set forth in his Declaration, how he is damnified.

Mistaking of an Action is no Bar to a right one.

Case lies for selling of Goods not his own.

Joint Interest with others ought to be pleaded in Abatement.

in Abatement.

Where an Action lies against all the Proprietors, or the Master of the Vessel.

Case for keeping of a Dog, *ad mordendum oves consuetum*.

How to lay a Declaration for keeping of a Dog *ad mordendum oves consuetum*.

invenit tam graviter momordit, quod twenty of them died of the said Biting, and the others were much hurt; and assigned for Error, that the Declaration should have been, *Quod sciens canem præd' ad mordendum oves consuet' scienter retinuit*: For it may be, that he *scienter retinuit canem,*

Note, This Action will not lie, unless the Plaintiff shews in his Declaration, that he was damnified by the Defendant's not appearing to give his Evidence, *March 29.*

The mistaking of an Action is no Bar or Estoppel to the bringing of a new Action. *5 Rep. 33. a.* See Title *Declaration*.

A Man possessed of Goods, sells them as his own, which are not so: An Action lies for the Disceit, without a Warranty, or alledging that he knew them not to be his own. *Showers's Rep. 66.*

If the Plaintiff hath a joint Interest with others, yet upon Not guilty pleaded, he shall recover for his Part; and if the Defendants would have taken Advantage thereof, they ought to have pleaded it

Sands v. Child, 3 Lev. 351, 354.
The Master of a Ship takes Goods aboard to carry for Hire; the Goods are spoiled: An Action lies against the Proprietors, or the Master, at the Plaintiff's Election. *3 Lev. 258, 259.*

To say. *Quendam canem ad mordendum oves consuet' apud H. scienter retinuit*, is good; for the Word *scienter* goes to all the precedent Matter, and is not traversable, but ought to be proved in Evidence. *Danvers's Abr. 19. Letter H.* But in *Cro. Car. 487. pl. 12.* it was held to be naught, because it was not said, *Sciens canem prædict' ad mordendum, &c.*

The Plaintiff declared, that the Defendant *Quendam canem ad mordendum oves consuet' apud B. scienter retinuit & custodivit, qui quidem canis* such a Day and Place one hundred of the Plaintiff's Sheep *ibid.*

canem, and yet knew not that he was *ad mordendum oves consuet*; and of that Opinion was the Court. *Cro. Car.* 487. *pl.* 12.

Case lies upon the Custom of the Realm for Dilapidations. 3 *Lev.* 268.

Case for Dilapidations.

Where the Plaintiff hath declared for the stopping of the Water-course to his Mill, if it be not set forth to be an ancient Mill, an Action on the Case will not lie. 1. *Leon. Case* 368.

An Action will lie for stopping a Water-course to an ancient Mill.

Case lies against the Party who hired a Horse, and promis'd to load him with such a Weight; he loaded him with more, and hurt the Horse. 2 *Leon. Case* 131.

Case for over-loading an hired Horse.

If a Man finds a Thing, and uses it, he is answerable, because it is a Conversion; so if he misuseth it; but for negligent keeping no Law can punish him. *Cro. Eliz.* 219. *pl.* 6. If a Man find an Horse, and give him no Sustenance, he is not punishable for it. *Ibid.*

Where Things are found, how to be used.

The Plaintiff declares, that the Defendant kept a Mastiff Dog, *ad mordendum porcos assuetus*, which bit a Sow of the Plaintiff's so that she died of the biting: And moved, that it is proper for Dogs to hunt Swine out of the Grounds: But *per Curiam*. It is not lawful to keep Dogs to bite and kill Swine. *Cro. Car.* 254. *pl.* 5.

Case lies for keeping of a Dog, *ad mordendum porcos assuetus*.

An Action lies for chasing of his Cattle into the Close of J. S. for which he took them Damage Fesant, and the Plaintiff was inforc'd to pay 20s. for Amends, *per quod* he sustained Damages: And adjudged that this Action well lies in Case. *Cro. Car.* 325. *pl.* 7.

It is not lawful to

Case lies for driving the Plaintiff's Cattle into the Ground of J. S. who took them Damage Fesant.

The Plaintiff pretending a Title to Hay that the Defendant had in a Field, mix'd some of his Hay with the Defendant's; the Defendant carries it away; the Plaintiff brings Trespass: And held that it lies not, because the Intermixture was the Plaintiff's own Act, and shall not turn to the Defendant's Prejudice. *Popb.* 38.

The Plaintiff shall not have an Action for his Goods, where he mixes them with the Defendants.

It lies for a Tenant for Years against one for stopping up of his ancient Lights. *Cro. Car.* 325. *pl.* 8. 326.

It lies for a Tenant for Years for stopping up ancient Lights.

It lies against the Post-Master General for the Loss of a Letter with a Bill of Exchange in it. 5 *Mod.* 456. *per opinionem Holt tantum*.

Against the Post-Master General for Loss of a Letter, in which was a Bill of Exchange.

A Recovery in an Action popular by Covin, or a Bar in the same by Covin, is no Plea in an Action sued *bona fide*.

A Recovery in a popular Action by Covin, is no Plea in an Action *bona fide* brought.

4 D. 7. cap. 20.

Account.

Account, See Auditors.

Account, *Quid.*

Account is a Writ which lies where a Bailiff, or other Person, who ought to render an Account, refuses to give his Account.

In what Cases an Action of Account lies, and not an Action of Debt, or on the Case.

In all Cases where the Party who receives Money, is to have any Allowance or Reward for the receiving thereof, an Action of Account-render, and not an Action of Debt, or upon the Case must be brought against him.

See more on this Head in General *Abridgment*, Tit. Account from 215 to 235.

Where an Action of Debt, or on the Case lies at Plaintiff's Election.

An Action of Debt, or an Action on the Case upon an *Insimul computasset*, lies at the Election of the Plaintiff against one for receiving Money of a third Person for the use of the Plaintiff, altho' he had no Authority given him to receive it. *Hill. 23 Car 1. B. R.* For it is the Interest that the Plaintiff hath in Money paid for his use, that gives him the Cause of Action, and it is a Receipt of the Money that makes the other Party liable to the Action, and it matters not by what Authority he receiv'd it.

Where an Action lies for Money receiv'd to my Use.

So likewise where I pay Money to another Person, I may bring an Action against him for so much Money receiv'd by him of me to my Use; and if upon the Trial he cannot make it appear that he receiv'd the same for some Debt due from me to him, or to be paid over by my Order, which he hath done, &c. an Action will lie against him for it.

An *Insimul computasset* lies not for Rent alone; but if mix'd with other Things, it does.

An Action upon an *Insimul computasset* doth not lie for Rent (alone) due and in arrear, for the Rent demandable is certain; but if the Rent be behind, and there are (also) all other Things mix'd with it for which the Action is brought, then an Action upon an *Insimul computasset* may be brought for both of them together, because it is uncertain upon the whole Matter what is due to the Plaintiff. *Trin. 1651. B. S.*

The Agreement between the Master of the King's-Bench Office and his Clerks.

It was agreed by Sir Robert Henly and his Clerks before the Lord Chief Justice *tempore Car. 2.* that they should account every second Term, which Agreement is now practised.

Every

Account.

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Every Clerk of this Court, every Term at the Time of the making up his Account, shall pay to the Officer of this Court, who receives the Bills here in the Court to be filed, his usual Fee of two Shillings for every Attorney and Philazer of this Court, who employs such Clerk to enter for him in the said Court. *Per Cur. Trin. 15 Car. 2. Regis.*

Every Clerk on making up his Account, is to pay two Shillings a Term for every Attorney who employs him.

Every Attorney of B. R. shall account separately by himself at the End of every Term; and two, three or more of them shall not account in the Name of one Clerk, as it has been lately used. And it is further order'd according to the ancient Rules of the Court, That if any Clerk of this Court shall sign, or cause to be signed, any Writs, or shall file, or cause to be filed any Rolls in his Name for any other Clerk, who is in Arrears with his Account, then such Clerk who shou'd sign, or cause to be signed, such Writs, or should file, or cause to be filed, such Rolls in his Name, shall pay the Arrears of the Account of such Clerks, for whom such Writs were signed by him, or any Rolls filed by him. *Per Cur. Trin. 20 Car. 2. Regis.*

Every Attorney is to account separately, and not two or three in one Clerk's Name.

And every Clerk signing any Writs, or filing any Rolls in his Name for any other Clerk in Arrears, shall pay all such Arrears himself.

An Account lies not of a Thing certain; as if a Man delivers 10*l.* to merchandize with, he shall not have an Account of the 10*l.* but of the Profits, for these are uncertain. *Bro. Account 25. Danvers's Abr. 215, 216, &c.*

Account lies not of a Thing certain.

Brownl. 76. See

If one charges me as Bailiff of his Goods *ad merchandizandum*, I shall answer for the Increase, and shall be punish'd for my Negligence: But if he charges me as his Receiver *ad computandum*, I shall be answerable only for the bare Money or Thing delivered. *2 Leon. Case 145.*

How it is where the Bailiff is to account *ad merchandizandum*, and where for bare Money or Goods.

How the Judgment shall be against a Bailiff *ad computandum* for Money, see *Cro. El. 806. pl. 7.*

How Judgment shall be against a Bailiff in an Account for Money.

Where an Account-Render is brought, if the Defendant will plead *Plene computavit*, and offer to bring the Money into Court, that will signifie nothing. For that in a Trial upon an Action of Account, the Jury have nothing to do, unless an Account stated be proved; but an Account must be before Auditors, for they are the Judges, and not the Jury. *Pasch. 9 W. B. R.*

Account must be before Auditors.

In a Declaration in an Action of Account, as Receiver, and says not by whose Hands, is naught upon a Demurrer; but cured by a Judgment, *Quod computet. 2 Lev. 126.*

Where a Count in Account is ill on a Demurrer, but cured by Verdict.

By the Statute of 4 & 5 *Annæ*, it is enacted, That Actions of Account may be brought against the Executors and Administrators of every Guardian, Bailiff and Receiver; and also by one Joint-

Account lies against Executors and Administrators of Guardians, Bailiffs and Receivers, by Stat. 4 & 5 *Annæ*.

Tenant,

Also against one Joint-Tenant, and Tenant in Common, his Executors and Administrators, against the other.

Auditors to administer an Oath. And the Auditors appointed by the Court, where such Action shall be depending, are impower'd to administer an Oath, and examine the Parties touching the Matters in Question:

And be allowed for their Trouble.

Where Goods of three several Persons are delivered to merchandize, each Party may bring his Action for his third Part.

And for their Pains and Trouble in auditing and taking of such Accounts, they shall have such Allowances as the Court shall think fit, to be paid by the Party, on whose Side the Ballance of the Account shall appear to be.

An Account was brought for the third Part of 28 Tun of Wine, which the Intestate, the Defendant and A. B. in the Life of the Intestate, had occupied in common, *ad communem utilitatem eorum, ac eadem pro tempore prae.* to the Hands of the Defendant, by the Assent of the Intestate, and A. B. to merchandize for their common Profit, *fuere commissa*: And after Verdict, moved that he demands an Account of a third Part of the Goods, where he alone ought not to demand the Account, but to join the others with him: *Sed non allocatur*; for he may sue, tho' his Companions would not. *Cro. Jac. 410. pl. 10.*

Statute of Limitations doth not extend to Merchants Accounts. 21 Jac. cap. 16.

But where they bring *Indebitatus* or *Insimul computasset*, they are within the Statute.

The Statute of Limitations of Actions, 21 Jac. cap. 16. doth not bar the Plaintiff, who is a Merchant, from bringing an Action of Account-Render for Merchandize at any time; those Actions for Accounts for Merchandize being excepted out of the Statute. But where a Merchant brings an Action on an *Indebitatus Assumpsit*, or *Insimul computasset*, for Moneys due in the way of Merchandize on an Account stated; such Actions are not within the Exception of the Statute, which extends only to Accounts current. And the Reason thereof was, because it often happens, that the Merchants, who hold Correspondence one with another in several Parts of the World, may have Accounts current between them for many Years, before they have an Opportunity of conferring together, in order to state their Accounts. 2. Saund.

All other Actions of Account Render within the Statute. 21 Jac. cap. 16.

How to assign a Breach for Non-payment upon an Account.

Where the Condition of a Bond is to give a true Account upon Request, and the Party who is to give the Account, makes up his Account, and makes a right Charge upon himself, but puts more in his Discharge than he ought; the Plaintiff cannot assign the Non-payment of the Charge as a Breach: Because, until the Account is agreed upon on both Sides, it is no Account. But the Breach must be assigned on the not giving a true Account, and then all the other Matters will follow in Evidence.

124, 125. 1 Ventr. 89, 90. 1 Mod. 70, 270. 2 Mod. 311. 1 Sid. 465. And all other Actions of Account-Render, and *Insimul computasset*, are within the Statute of 21 Jac. cap. 16.

Where the Condition of a Bond is to give a true Account upon Request, and the Party who is to give the Account, makes up his Account, and makes a right Charge upon himself, but puts more in his Discharge than he ought; the Plaintiff cannot assign the Non-payment of the Charge as a Breach: Because, until the Account is agreed upon on both Sides, it is no Account. But the Breach must be assigned on the not giving a true Account, and then all the other Matters will follow in Evidence.

Account.

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The Defendant after a Judgment *quod computet* appears and enters into the Account, and the Auditors assigned a Day for it, and the Plaintiff did not proceed; here can be no Nonsuit, because it is after Judgment; but a Discontinuance must be entered, and if the Plaintiff will afterwards proceed, he must have a *Sci. Fa.* upon this Record *ad computandum.* *Cr. El. 19. pl. 6.*

The Defendant enters into the Account, and becomes nonsuited.

A Discontinuance must be entered.

Parishioners cannot bring an Action of Account against their Church-Wardens, but they may make other Church-Wardens, and they shall have it against their Predecessors. *Br. Account 71.*

Parishioners cannot bring it against their Church-Wardens, but the next Church-Wardens may.

If my Bailiff or Receiver makes a Deputy, I shall have an Account against my Bailiff or Receiver, not against his Deputy. *Fitz. N. B. 119. b. 4 Leon. 32.*

Account lies against the Receiver, not his Deputy.

In an Action of Account against one as Bailiff, he shall have Allowance of his Costs and Expences, which shall not be allowed to one sued as Receiver. *Co. Lit. 172.*

A Bailiff shall be allowed his Charges, but a Receiver not.

A Bailiff can't be charged as a Receiver, because if he be charged as Bailiff, he shall upon his Account be allowed his Charges and Expences, which shall not be allowed him where he is Receiver. *Rolle's Abr. 119. H. 3.*

A Bailiff must not be charged as a Receiver, And why.

A Man receives the Rent due to me from my Lessee for Life, or my Tenants; an Account lies against him as Receiver. *11 R. 2 Account 49. 6 R. 2. Account 47.*

It lies against one who receives my Rents.

It lies not against Guardian in Socage for Copyhold Lands. *Cro. Car. 229. pl. 7.* But the Lord of a Manor appoints a Guardian for Copyhold Lands, and he shall be accountable: Also the Chancery will call all Persons to account who act as Guardians.

It lies not for Copyhold Lands.

But the Lord appoints a Guardian for them.

And how to be accountable.

The Writ shall be general, *de tempore quo fuit Receptor denariorum*, without saying by whose Hands; but that must be shewn in the Court. *Co. Lit. 126. a.* But it is not so if against a Bailiff. *Co. Litt. 172. a.*

How the Writ and Count to be against a Receiver, and how against a Bailiff.

Ne unques Ballivus, or Nunquam fuit Receptor denariorum, are good Pleas. *21 E. 3. 60. Keilm. 114. a, b.*

How to plead an Account.

In an Account for 20 Pigs of Lead, the Defendant pleads, Never his Receiver thereof, but says not, For any Part thereof, this is naught; but if he says, Never his Receiver, it is well enough. *2 Mod. 145. Raft. 18. a.*

The Jury assessed Damages in an Action of Account against the Defendant as *Receptor denariorum*; and adjudged good. *3 Leon. Case 211.* So also against a Bailiff. *ibid.*

Damages given in an Action of Account; and good.

Where Robbery is a good Plea before Auditors.

his Default or Negligence is a good Plea. 1 Roll. Abr. 125, 14, 15.

The Factor sells Goods to one who breaks

It is thought to be a good Plea.

An Arbitrament is a good Bar to the Action, not before the Auditors.

before the Action brought, and that he was awarded to pay 10*l.* which he had paid: And held to be no Plea before the Auditors, but it ought to have been pleaded in Bar of the Action. Cro. Car. 161. pl. 9.

A Man pleads before Auditors that he was robbed by Felons: *Dubitatur* whether it be a good Plea, or no; but that he was robbed of the Goods without

So I take it that where a Factor sells his Master's Goods to a Person in very good Credit and Reputation (and without any Fraud) and then the Person breaks, that this may be a good Plea before Auditors.

Upon an Action of Account, and *Ne unques Receptor* pleaded, and found against him; he before the Auditors pleads an Arbitrament of all Accounts

Acquittance, See Acceptance.

Acts of Parliament, See } Parliament.
Statutes.

Addition.

Addition, what.

A Addition is that which is given to a Man over and above his proper Name and Surname, viz. to shew of what Estate, Degree, or Mystery he is of, and of what Town, Hill, or County.

A Man may have different Additions at different Times and Places.

Some Additions are *ad libitum*, others not.

A Man may have one Addition at one Day and in one Place; and yet may have another different Addition at another Day and in another Place. *Mich. 22 Car. B. R.* For some Additions, viz. of Esquire, Gentleman, Yeoman, &c. are no Part of the Name, but Additions *ad libitum*, and as People please to call them: But the Title of Knight or Baronet is Part of the Party's Name; and it is material to be rightly used in Pleading; but the Titles of Gentleman or Yeoman are Additions *ad placitum*, to be used or not used. *Mich. 24 Car. B. R.* Or to be varied.

Title of *Irish* Earl, no Addition in *England*; and how written in our Law.

But the Title of an Earl of *Ireland* is not an Addition of Honour here in *England*: An *Irish* Earl in our Law is written by his Christian Name and Surname, with the Addition of Esquire only. *Mich. 1649. B. S.*

In all Actions of Trespafs, and other Actions sued by Original, where the Cause of Action is alledged to be *Vi & Armis*, or against the Peace of the King, a true Addition of Degree, Quality, or Mystery, and the true and certain Place of the Abode of every Defendant, must be put in at the Peril of the Plaintiff's Attorney. *Per Curiam*, 15 Car. 2. The Reason of making of this Order was this: Before the Act which was made for the taking away of Fines for *Capiaturs*, the Clerks of the Crown-Office used to take from the Judgment-Rolls all the Judgments which were entred with a *Capiatur*, and then they did thereupon sue out Process of Outlawry; and because, if the Addition was not there, they could not tell certainly who was the Defendant, nor where he lived.

The true Addition to be in all Actions of Trespafs, &c.

The Cause of making this Order.

who was the Defendant,

Additions how to be pleaded when with a *Nuper*, and when without, see *Lutw.* 40. and *Stat. 1 H. 5. cap. 5.* And what are good Additions according to that Statute, and what not, see *2 Inst.* 668, 669.

How Additions to be pleaded.

1 D. 5. rap. 5.

In every Original Writ of Personal Actions, Appeals and Indictments, in which Exigent shall be awarded, Additions shall be made to the Names of the Defendants, of their Estate or Degree or Mystery; and of the Towns or Hamlets, or Places, or Counties, of the which they were or be, or in which they were or be conversant; and if the said Additions shall be omitted in Process to the Outlawry, the same shall be void; and that before Outlawry pronounc'd they shall, at the Exception of the Party, be abated for Want of such Addition.

Where and in what Cases Additions shall be to the Defendant's Names in Original Writs.

1 D. 5. rap. 5.

There ought to be inserted into all Affidavits, the Additions and Habitations of the Parties who make them. *Mich.* 15. Car. 2. *Per Cur.*

Additions to be inserted into Affidavits.

The Writ *de Excommunicato capiendo* must contain a sufficient Addition of the Party excommunicated, according to the 1 Hen. 5. cap. 5. or else the Party shall not incur the Penalties of the Statute, 5 Eliz. cap. 23.

And also into Writs *de Excommunicato capiendo*.

1 D. 5. rap. 5.

5 Eliz. rap. 23.

If one be of the Degree of a Duke, Marquess, Earl, Viscount and Baron, he shall have the Addition of the most worthy Dignity, viz. of a Duke. *2 Inst.* 669.

What Addition shall be according to the Degree.

The Addition of the Parties indicted may be in *English*; as Weaver, Taylor, &c. 1 Sid. 101.

Addition in *English* to an Indictment, and good.

If the Defendant hath no such Addition as the Act requires, and yet appears upon Process, and pleads, taking no Advantage thereof by Exception, he hath lost the Benefit of the Act. *2 Inst.* 670. By Pleading to Issue it is admitted. *Cro. Jac.* 610. A bad or no Addition is cured by the Appearance of the Parties. 1 Keb. 885.

Where the Advantage of taking Exception to the Want of Addition, shall be lost.

For the general Learning concerning Additions where, and in what Cases they shall be given, see *General Abridgment*, pag. 235 & sequ. Tit. Additions.

Adjournment.

Adjournment.

Adjournment, *Quid.*

Adjournment is when any Court is determined, and assigned to be kept again at another Time or Place.

Manner of Adjournment.

Substance of it.

Before the Writ of Adjournment is read in Court, the Cryer of the Court makes *Oyes* three times; and the Substance of the Adjournment is to give Licence to all Parties that have any thing to do in the Court, to forbear their Attendance, and to take their Ease till such a Time precisely named, and then to attend in Court again.

Meaning of the Word *Adjourn.*

The Meaning of the Word *Adjourn*, is to put off any thing to another Day, and in the Sense here it is to put off the Business of the Court till the Day that is precisely set, that none should be bound to needless Attendance in the mean time. For the Solemnity of adjourning the Courts of Justice, see *Cro. Car.* 11, 12, 13, 27, 200. 1 *Jones* 84, 85. 1 *Sid.* 276. 1 *Lev.* 176.

Days of adjourning the Court.

Every last Day of the Term, and every Eve of a Day, which is not *Dies Juridicus*, or a Law-Day, whereof there are two such Days in *Michaelmas* Term, viz. *All-Saints* and *All-Souls* Day, and one a-piece in *Hillary* Term, *Easter* Term and *Trinity* Term, viz. The Day of the Purification of our Lady in *Hillary* Term, *Ascension-Day* in *Easter* Term, and *St. John the Baptist's* Day in *Trinity* Term, the Court is adjourned; and it is used to be done in *French* two several Times, sitting the Court, towards the later end of the Day, a good space of Time being between the first and second pronouncing of the Adjournment.

Jury not appearing full, cannot be adjourn'd.

A Jury which doth not appear full, cannot be adjourned, for such a Jury is not accounted a Jury. *Hill.* 22 *Car.* 1. B. R. And so are not bound to attend the Court, for it would be to no purpose.

Times of adjourning the Court.

The first Adjournment of the Court is about Eleven of the Clock, and the last immediately before the rising of the Court: That all Parties that have Business in the Court, may the better take Notice of it, who may haply be there at the last Adjournment, though not present at the first, *Q'è contra.*

Adjournments of Sessions, &c. in the Preter-Tense.

That all Adjournments of the Sessions are in the Preter-Tense, and so of Indictments, *Raym.* 115.

Adjournment.

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If the Adjournment be of all Writs, Pleas, &c. of one common Return to another, this will not adjourn Pleas by Bill *in Banco Regis*; for upon these Pleas the Continuances are to certain Days, and not to common Returns; and therefore upon such Adjournments, all the Pleas upon Bills are discontinued. See *Bro. Discout' of Process* 36. *Amendment* 70.

How the Writs of Adjournment must be.

The Justices of Assize have Power to adjourn the Parties to *Westminster*, or to any other Place *in itinere suo*, or out of their Circuit. 47 E. 3. 2. *Magn. Charta*, cap. 12. 2 *Inst.* 26.*

To what Places Justices of Assize may adjourn. 47 E. 3. cap. 12.

See the Adjournment of the Court of King's Bench from the City of *Westminster* to the City of *Oxford*, and from thence to *Windsor* in the County of *Berks*, after a *Venire fac'* awarded, 1 *Saund.* 12, and 179. 1 *Keb.* 942, 943.

For general Learning concerning the Adjournment of the Term, &c. See *Danv. Gen. Abridgment*, Title Adjournment.

Administrator and Administration.

Administrator and Administration, Vide

Baron and Feme.
Ca. Sa.
Devastabit.
Executor.
Infant.
Intestates Estates.
Will.

An Administrator is he to whom the Ordinary commits the Administration of the Goods of a dead Man for Default of an Executor: And an Action will lie against him, and for him, as for an Executor; and he shall be charged to the Value of the Goods of the dead Man, and no farther; and if he be nonsuited, or a Verdict be against him, he shall not pay Costs.

An Administrator, what.

Where the Payment of Money would not be for the Advantage of the Testator, there the not paying of it cannot be pleaded to be to the retarding of the Administration of his Goods and Chattels.

Payment of Money, if not for the Advantage of the Testator, cannot be pleaded.

L

Mich.

Mich. 22. Car. B. R. For the Estate of the Testator is not concerned by the Payment or not Payment.

All Actions are given to Administrators by Statute Law :

For the Common Law took no Notice of them.

Before Administrations were granted, the Ordinary administer'd.

No Exception can be taken on a Demurrer for want of alledging the bringing Letters testamentary into Court.

mentioned, except

The Ordinary of the Diocese shall grant Administration of the Goods of Intestates, to whom Money is due for Work done in the King's Yards, &c. Such Goods, &c. not to be deemed *Bona notabilia*.

Letters of Administration revocable by an Act of Revocation, tho' not sealed.

heard Doctors of the Law affirm.

The Ordinary may not repeal Letters of Administration, if duly granted; but if unduly, he may.

do it in the former Case, this would be to make his Power arbitrary, which the Law abhors; but the later is but to reform an Error, which all Laws do allow.

Kindred of the Half Blood equally intitled to Letters of Administration with those of the Whole Blood; but not to inherit Lands.

Indebitatus Assumpsit lies not against an Administrator, unless the Declaration shews for what the Testator was indebted.

All Actions which an Administrator can have, are given unto him by several Statutes. *Mich. 22 Car. 1. B. R.* For the Common Law took no Notice of an Administrator; but it did of an Executor *de son tort demesne*.

Before Administrations were granted, the Ordinary administered the Goods of the Intestate.

By Statute 4 & 5 *Anna Reginae, For Amendment of the Law*, No Advantage or Exception on Demurrer to be taken for the Default of alledging of the bringing into Courts Letters Testamentary, or Letters of Administration, or other Omissions therein specially set down for Cause of Demurrer.

Also, that the Ordinary of the Diocese, or such other Persons to whom the ordinary Power of the Probate of Wills, or granting Administration doth belong, do grant the same in relation to the Goods and Chattels of Persons dying Intestate, to whom Moneys or Wages are due, for Work done in his Majesty's Yards and Docks; and that the Salary, Wages or Pay due to any such Person, for Work

in the Yards or Docks, as aforesaid, shall not be deemed to be *bona notabilia*, whereby to found the Jurisdiction of the Prerogative Court.

Letters of Administration may be revoked by an Act of Revocation without a Seal. *Mich. 21 Car. 1. B. R.* For they may be granted by the Act of the Court, as they call it, without a Seal. This I have

The Ordinary ought not to repeal Letters of Administration, which he hath duly granted; but if they be unduly granted, *viz.* to such a Person, who by Law ought not to have them, he may revoke them. *Pasch. 23 Car. 2. B. R.* For if he might

One of the Half Blood is in as equal a Degree of Kindred, to the Intestate, to have Letters of Administration granted unto him as one of the Whole Blood is, *Mich. 23 Car. 1. B. R.* though not as to inherit his Lands.

A general *Indebitatus Assumpsit* doth not lie against an Administrator, nor any other Person. *Hill. 23 Car. 1. B. R.* But if it be shewn in the Declaration for what the Testator was indebted, it well lies.

Letters of Administration granted *per Carolum Regem debito modo*, adjudged to be well granted in that Form. *Hill. 24 Car. 1. B. R.* This was when the Ecclesiastical Jurisdiction was taken away.

Letters of Administration granted by the King *debito modo*, held good.

Where the Parties that require Letters of Administration from the Ordinary, are of equal Degree of Kindred to the Intestate, there it is in the discretion of the Ordinary to grant them to which of them he pleaseth. *Pasch. & Mich. 24 Car. 1. B. R.* For by so doing, he doth neither of the Parties Wrong; *sed Quere*, Whether he may not grant them to both?

When Kindred in equal Degree demand Letters of Administration, the Ordinary may grant them to which of them he pleases.

Where one bequeaths a Legacy to one of his Kindred, and the Residue of his Goods to another, Administration ought to be granted to him to whom the Residue of the Goods are bequeathed. *Mich. 24 Car. 1. B. R.* For it appears by the Bequest of the Legacy to the Party, that he intended only to make him a Legatee, and not an Executor of his Goods and Chattels.

When a Legacy is bequeathed to one of the Kindred, and the Residue of the Goods to another, Administration must be granted to the later.

Where a Man dies intestate, the Ordinary shall depute the next and most lawful Friends of the Person who died intestate to administer his Goods.

To whom the Ordinary shall grant Administration.

31 E. 3. cap. 11.

An Administrator may bring Trespass *de bonis asportatis in vita intestati*, by the Equity of the Statute of 4 E. 3. c. 7. which gives it to Executors, because it is in equal Mischief, *Cro. El. 384. pl. 7.*

An Administrator may bring Trespass for taking of the Intestate's Goods by the Equity of 4 E. 3. cap. 7.

An Administrator mortgages a Term, and makes A. Executor, and dies; B. takes out an Administration *de bonis non* of the Intestate, and claims the Residuary Interest and Trust of the Term, and that he may redeem. *Curia.* The Executor of the Administrator shall have it. *Chanc. R. 224.*

An Administrator mortgages a Term, who shall redeem it.

An Action of Account lies against the Executor or Administrator of any Guardian, Bailiff and Receiver, *per 4 & 5 Anne. Vide Title Account.*

Account lies against Executor or Administrator of a Guardian.

4 & 5 Anne.

An Administrator shall distribute the personal Estate equally between the Whole-Blood and Half-Blood. 2 Lev. 173.

Administrator shall distribute the Personal Estate between the Whole and Half Blood.

An Administrator may sue for Goods before Possession; so may an Executor. 8 Rep. 135. b.

He may sue for Goods before Possession.

Where there is a Residuary Legatee, Administration granted to the next of Kin, is revocable and grantable to the Legatee, tho' no Residue at present. 2 Lev. 56.

Grantable to the Residuary Legatee, and not to the next of Kin.

By the Statute made 4 & 5 W. & M. cap. 20. for docketing of all Judgments; It is enacted, That no Judgment not docketed as that Act directs, (which see in the Title Judgments) shall affect any Purchaser or Mortgagee, or have any Preference against the Heirs, Executors, or Administrators, in their Administration of their Ancestors, Testators, or Intestates Estates.

What Judgments shall affect Administrators.

Stat. 4 & 5 W. & M. cap. 20.

The Distribution Act,
22 & 23 Car. 2. cap. 10.
how Distribution is to be
made.

By the Statute of 22 & 23 Car. 2. cap. 10. it is enacted, That after Allowances made of Debts, Funeral Charges, and just Expences, Distribution of what remains shall be made amongst the Wife and Children, or Childrens Children, (if any such be) or otherwise, to the next of Kin to the dead Person in equal Degree, or legally representing their Stocks, *pro suo cuique Jure*, according to the Laws in such Cases, and the Rules and Limitations hereafter set down, (*viz.*) One third Part to the Wife of the Intestate, and all the Residue, by equal Portions, to and amongst the Children of such Persons dying intestate, and such Persons as legally represent such Children, in case any of the said Children be then dead, other than such Child or Children not being Heir at Law, who shall have an Estate by the Intestate's Settlement, or be advanced by the Intestate in his Life, equal to the Share which shall by such Distribution be allotted to the other Children to

29 Car. 2. cap. 3.
30 Car. 2. cap. 6.

whom the same is to be made. *Vide* the Statute at large. And also another Statute made 29 Car. 2. cap. 3. and 30 Car. 2. cap. 6. continued for seven Years, with Explanations and Additions; which see in Title *Intestates Estates*; and made perpetual by an Act made 1 Jac. 2. cap. 17. See the Titles *Distribution* and *Intestates Estates*.

1 Jac. 2. cap. 17.

Who ought to have
Administration, and why.

The Mother ought to have the Administration of the Goods and Chattels of her Child, before a Son, or a Brother, or a Sister. For there is a nearer Bond of Nature between the Child and the Parents, than betwixt the Child and any other collateral Tye of Blood or Kindred; and the Child can never sufficiently satisfy the Obligation he hath to his Parents for his Being and Education, especially to his Mother. 1 *Ventr.* 414, 324. *Molloy de Jure Maritimo* 364. And now by the Statute of 1 Jac. 2. cap. 17. the Act of 22. & 23 Car. 2. cap. 10. and the other Act, are made perpetual. And it is also enacted, That every Brother and Sister, and their Representatives, shall have equal Share with the Mother.

The nearest of Blood
shall be preferred in Ad-
ministration.

The Husband shall ad-
minister to his Wife, and
the Wife to her Husband.

Administration. *Hill.* 21.

When revocable.

When it may be re-
pealed by the Delegates.

An Act of Court, an
Evidence of an Admi-
nistration.

If the Daughter marries, her Husband shall take Administration of her Goods, and not her Mother. So also, if the Husband dies, the Wife, or next of Kin, as the Ordinary pleases, shall have Administration. *Hill.* 21. *Car. 2. Franklin v. Fruen in B. R. Shower's Rep.* 351. Administration duly granted, according to the Statute, cannot be revoked without just Cause, as Lunacy, &c. 1 *Lev.* 157, 186.

Where Administration is granted where not grantable, or *inverso ordine*, it may be repealed by the Delegates, *non obstante* the Statute. 1 *Lev.* 305.

An Act of the Court was Evidence of an Administration, 1 *Lev.* 25, without Seal, 101.

Administration shall be granted where the Bond is at the time of the Intestate's Death; but upon a simple Contract, it shall be where the Debtor was at the time of the Intestate's Death, unless there be *bona notabilia*; which if there are, then it must be granted by the Prerogative Court of Canterbury. *Bona notabilia*, is where the Party who dies had Goods in several Dioceses, to the Value of 10 l. and more: And if any other Jurisdiction than the Prerogative Court shall grant Administration where there are *Bona notabilia*, then such Administration is void. 1 Plow. 281. Greysbrook and Fox. Cro. El. 472. pl. 25.

Where Administration shall be granted.

Bona notabilia, What they are.

Where void.

What shall make *Bona notabilia*.

Administration committed to the Obligor, is no Extinguishment.

Administration where void.

Where voidable.

How to declare as Administrator *cum Testamento annexo durante minori etate*.

17 Years of Age.

Ceases at 17.

How to declare for an Administrator *durante minori etate*,

and how against him. Cro. Jac. 590. See

What an Administrator *durante minori etate*, may do.

What an Administrator *durante minori etate* of Infant Executor *ad commodum* of the Infant only, can do.

But it was said that if the Intestate had three Pound in one Diocese and forty Shillings in another, it shall be *Bona notabilia*. 4 Leon. Case 342.

Administration is granted to the Obligor, this doth not extinguish the Debt, but it shall be Assets in his Hands. 8 Rep. 136. a.

Administration is granted by the Prerogative Court, where the Intestate had not *Bona notabilia* in divers Dioceses, it is not void, but voidable. 8 Rep. 135. a.

The Plaintiff declares against the Defendant as Administrator; he pleads that he is Administrator *cum Testamento annexo durante minori etate* J. S. But doth not say, That J. S. is *Infra etatem septemdecim Annorum*. And therefore it was held to be naught; because that is in the Defendant's own Confession, and not in the Plaintiff's. And when the Executor is Seventeen, the Administration ceases. 5 Rep. 19. Cro. El. 602. pl. 14.

Where an Action is brought by an Administrator *durante minori etate*, he ought to shew that he is yet within the Age of 17; because it is in his own Confession. But where an Administrator *durante minori etate* is sued, there it need not be shewn. *postea*, and Tit. Executors.

An Administrator *durante minori etate*, cannot sell any Goods, except of Necessity for Payment of Debts, or *bona peritura*. 5 Rep. 29. b.

Administration was granted *durante minori etate* of the Infant Executor, *ad commodum & proficuum* Executoris. Such Administrator hath but a special Property *ad commodum* of the Infant, and not such a general Property as another Executor or Administrator hath; and therefore his Sale of Goods, unless for Necessity for Payment of Debts, or that they be *bona peritura*, shall not bind. Cro. El. 718. pl. 46. 719.

Where a Man makes an Infant of tender Years Executor, if Administration *durante minori etate*, be granted specially, *ad opus, commodum & utilitatem* of the Infant, there the Administrator cannot

make a Lease: But if it be granted generally, *ratione minoris etatis*,

Good till the Executor comes to Seventeen.

When Administration *durante minori etate*, determines.

21 Years of Age, and why.

Administrators to give Bond, which an Infant cannot do. *Pasch. 8 W. B. R.* See *Jones 48 Joyner and Watts, contra.*

Administration *cum Testamento annexo* granted in Trust.

When it determines.

Where Administration is granted *durante absentia*.

uch a Place out of

How and by whom Administrations are to be granted.

By an Ordinary.

as Ordinary of such a Place. But where the Law takes no Notice of the Jurisdiction of that Court where the Administration was granted,

By an Archdeacon.

præ de jure pertinet. Mich. 22. Car. 1. B. R. For where the Law takes

General Jurisdiction.

Particular Jurisdiction.

Prerogative.

claims any Privilege in Law by them: But the surest way is to say always, (except in Case of a Prerogative Administration) *Cui Commissio Administrationis præ de jure pertinet.* See *Cro. El. 836. pl. 12.*

Administration revoked, and new granted.

Where the Residue is not disposed of, it shall go in Administration.

have it, but the next of Kin shall take out Administration to the Use

Stat. 22 & 23 Car. 2. cap. 10.

Residuary Legatee dies, who shall have Administration.

he may recover Debts and Duties, and make Leases, which shall be good until the Executor comes to Seventeen, and also (as some say) till he enters.

6 Rep. 67. a. But, *per totiam Curiam*, Where Administration is granted *durante minori etate*, there Administration shall not determine until the Party come to twenty-one Years of Age: Because the Statute for granting of Administrations requires

Where an Administration is granted *cum Testamento annexo*, to the Use of a Legatee, the Administration determines when the *Cestuy que trust* comes to seventeen Years of Age. *Pas. 13 W. 3. B. R.*

Where an Administration is granted *durante absentia*, it ought to be averred in the Declaration upon such Administration, that the Party was then at the Realm.

Where Administration is granted by such a Jurisdiction as the Law takes Notice of, as a Bishop, who hath a general Power over his Diocese, there the Plaintiff need only to say, That the Letters of Administration were granted to him by the Bishop,

as where it was granted by an Arch-deacon, &c. there it must be said, *Cui Commissio Administrationis præ de jure pertinet.* Mich. 22. Car. 1. B. R. For where the Law takes Notice of a General Jurisdiction, it doth there take Notice of the Acts done by Vertue thereof: But where there is a Particular Jurisdiction, there it takes no farther Notice of the Acts done by Vertue thereof, than is made appear by the Party that

What shall be done where Administrations are revoked, and new granted. 8 Rep. 135. b. 136. a. *Vide Saunders's Rep.*

Where a Man makes an Executor, and gives him a Legacy, and doth not dispose of the Residue of his Personal Estate, the Executor shall not of the Relations, and they shall have their distributive Part according to the Statute of 23 & 23 Car. 2, cap. 10.

A Residuary Legatee dies before Probate, his Executor shall have Administration, and not the next of Kin to the first Testator. *Show. Rep. 26.*

Where

Where Moneys of the Intestate are received by a Stranger, after the Death of the Intestate, the Administrator may declare for Money received to his own Use. 6 W. & M. But it shall be Assets in his Hands.

How to declare for Money received.

Where any Judgment after Verdict (Note, after Verdict only) shall be had by, or in the Name of, any Executor or Administrator; the Administrator *de bonis non*, may sue out *Scire facias*, and take out Execution upon such Judgment. 17 Car. 2. cap. 8.

Administrator *de bonis non*, may have *Scire fac.* upon a Judgment after Verdict recovered, by Executor or Administrator.

17 Car. 2. cap. 8.

But where the Judgment is not after Verdict, the Administrator cannot have a *Sci. Fa.* to execute this Judgment for Default of Privity, but is put to begin again. See Cro. Jac. 4. pl. 3.

But it cannot be, for Want of Privity, where it is not after Verdict.

A *Scire facias*, *quare dampna assideri non debent*, was sued out against an Administratrix upon the new Statute for preventing of vexatious Suits, &c. upon an Interlocutory Judgment against the Intestate. To this, she pleads Judgments recovered against her upon Bonds entred into by the Intestate, and adjudged no Plea: Because the Act doth not allow the Executor or Administrator to say any Thing in Bar of the Action, more than the Testator or Intestate could have had when living, which was only in Arrest of Judgment; but he shall not be chargeable with Costs. Smith's Case in B. R. 3 Anna.

Sci. fa. upon the new Statute for preventing vexatious Suits, &c. 8 & 9 W. 3. cap. 10.

Death after the Interlocutory Judgment.

Cannot plead in Bar of the Action.

An Executor recovers Judgment by Default, and dies Intestate, an Administration *de bonis non* is granted. The Administrator *de bonis non* brings a *Scire facias* to have Execution upon this Judgment, and adjudged that it did not lie, Because the Statute of 17 Car. 2. cap. 8. extends only to Judgments after Verdict, and not by *Nil dicit*. Mich. 34 Car. 2.

Administrator *de bonis non*, shall not have, by the Statute of 17 Car. 2. cap. 8 a *Sci. fa.* upon a Judgment recovered by an Executor by Default; because that Statute extends only to Verdicts.

17 Car. 2. cap. 8.

B. R. The Words whereof are these: And be it Enacted by the Authority aforesaid, That where any Judgment after a Verdict shall be had by, or in the Name of, any Executor or Administrator; in such Case an Administrator *de bonis non* may sue forth a *Scire facias*, and take Execution upon such Judgment. See Title Jeofailes.

Administrators of Executors *de son Tort*.

What Remedy against Administrators of Executors in their own Wrong, see Title Executor, and the Statute of 30 Car. 2. cap. 7. Revived 1 Jac. 2. 5 W. & M. cap. 24. Sect. 12.

cap. 17, and 4 & 5 W. & M. cap. 24. Sect. 12.

It was moved in Arrest of Judgment after a Verdict, that it doth not appear in the Declaration by whom Administration was granted. This is good after a Verdict, but naught upon a Demurrer. 6 W. & M. B. R.

By whom Administration granted, omitted in the Declaration.

An Alien may be Administrator, and shall have Leases for Years of Lands and Personal Estate in Debts, because he hath them *in antier droit*: Also a Person outlawed or attainted may be an Executor. Cro. Car. 8. pl. 6, 9.

An Alien may be an Administrator.

A Person outlawed or attainted may be an Executor.

Admiralty, See { Courts.
Terms of the Law.

Abbotson

Advowson.

Advowson, what.

The Advowson of a Church is the Right of Presentation or Collation to the Church. Co. Litt. 119. b.

It may be appendant to incorporeal Inheritances. So may one Advowson to another.

An Advowson may be appendant to incorporeal Inheritances: So may one Advowson be appendant to another. 4 Leon. Case 348.

An Advowson in Fee may be devised.

An Advowson in Fee is devisable. Cro. El. 359. pl. 19.

Affidavit.

Affidavit, See Evidence..

Affidavit, Quid.

An Affidavit, generally speaking, is an Oath in Writing, sworn before some Person who hath Authority to take such Oath, and shall be made use of and read in Court upon Motions, but not upon Trials.

An Affidavit before a Master in Chancery, may not be read in B. R. nor will that Court make any Rule upon it.

An Affidavit made before a Master of the Chancery is of no Force, nor ought to be read in this Court: Nor will the Court make any Rule upon such an Affidavit. Trin. 22 Car. 1. B. R. and Pasch. 24. Car. 1. B. R. it being made *coram non judice* as to this Court. Vide Style's Rep. 445, 446.

Of what Affidavits ought to consist.

An Affidavit ought to set forth the Matter of Fact only which the Party intends to prove by his Affidavit; and not to declare the Merits of the Cause. 21 Car. 1. B. R. For the Court it to be Judge of the Merits of the Cause, and not the Party to swear them.

Affidavit.

45

The Plaintiff or the Defendant may make an Affidavit in the Cause depending, and it may be filed here; but it cannot be admitted in Evidence at the Trial of the Cause.

Either Plaintiff or Defendant may make Affidavit in the Cause, but such Affidavit may not be read as Evidence at the Trial.

An Affidavit made against a Verdict is not to be admitted; *Pasch. 23 Car. 1. B. S.* for the Oaths of twelve Men are of more Credit than the Oath of one Man.

An Affidavit against a Verdict not to be admitted, and why.

When an Affidavit has been read in Court, the other Party may see it, and take a Copy of it, if he pleases, (By *Rolle, Ch. Justice, Pasch. 1655.*) to make what use of it he can for his Advantage.

After an Affidavit has been read in Court, the other Party may take a Copy of it.

By an Act made 29 *Car. 2. cap. 5.* it is enacted, That the Chief Justice, and other Justices of the Court of King's Bench, or any two of them, whereof the Chief Justice of the Court of King's

Commissioners appointed to take Affidavits for the several Courts.

Bench for the Time being to be one for the Court of *King's Bench*: And the Chief Justice of the *Common Pleas*, and the rest of the Justices for the Time being, or any two of them, whereof the Chief Justice of the same Court to be one for the *Common Pleas*: And the Lord Treasurer, Chancellor, or Barons of the *Exchequer* for the Time being, or any two or more of them, whereof the Lord Treasurer, Chancellor, and Chief Baron to be one for the said Court of *Exchequer*; may by one Commission or Commissions, under the several Seals of the respective Courts, empower what and as many Persons as they shall think fit and necessary, in all and every the several Shires and Counties in *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, to take and receive all and every such Affidavit and Affidavits, as any Person or Persons shall be willing or desirous to make before any of the Persons so empowered, in or concerning any Cause, Matter, or Thing, depending or hereafter to be depending, or any wise concerning any of the Proceedings to be in any of the respective Courts.

29 *Car. 2. cap. 5.*

Also the Judge of Assize in his Circuit may take and receive any Affidavit, that any Person shall be willing and desirous to make before him, in or concerning any Cause, Matter, or Thing, depending or to be depending, or in any wise concerning any Proceedings to be in the said Courts of *Kings-Bench*, *Common Pleas*, and *Exchequer*, or any of them.

Judges of Assize may take Affidavits.

Which Affidavits shall be filed in their several and respective Offices of the said Courts the same do concern, and then be read and used in all the said Courts as other Affidavits are; and the same shall be of the same Effect as Affidavits taken in Court are. But they cannot be read till they are filed.

Which Affidavits may be filed, and then may be read.

Provided, that the Party who takes the same shall receive but one Shilling; and also that the King's Duty shall be paid to the proper Officer.

To pay but one Shilling besides the King's Duty.

No Dilatory Plea to be received, until Affidavit of the Truth thereof, or probable Matter.

4 & 5 Annæ cap.

Before whom Affidavits are to be made.

An Affidavit touching a Cause depending in this Court, must be made before one of the Judges of this Court, or Commissioner authorized by the Act, 29 Car. 2. c. 5. if the Cause be there depending. *Mich. 22. Car. B. R.* Because no other Person had Power to take the same at the Common Law, but a Judge of that Court.

The true Place of Habitation to be inserted.

No Dilatory Plea shall be received in any Court, unless the Truth thereof be proved by Affidavit, or some other probable Matter shewn, to induce the Court to believe that the Fact is true. *Vide Stat. 4.*

& 5 Annæ cap.

An Affidavit touching a Cause depending in this Court, must be made before one of the Judges of

this Court, or Commissioner authorized by the Act, 29 Car. 2. c. 5. if the Cause be there depending. *Mich. 22. Car. B. R.* Because no other Person had Power to take the same at the Common Law, but a Judge of that Court.

The true Place of Habitation, and true Addition of every Person, who shall make an Affidavit, shall be inserted into his Affidavit. *Per Cur. Mich. 15 Car. 2.*

Age-Praier and Age.

Age-Praier and Age, See { Infancy.
Parol Demurrer.

Age-Praier, what.

Age-Praier is when an Action is brought against an Infant for Lands which he had by Discent; there he shall shew the Matter to the Court, and pray, Quod loquela remaneat until he comes to the Age of twenty-one Years, and so by the Award of the Court the Suit shall stay: But in a Writ of Dower, and in an Assize, or as a Purchaser, he shall not have his Age. See 3 E. 1. cap. 47.

Where the Heir shall have his Age, and where not.

How Age shall be tried upon a Fine or Recovery.

See much good Matter in what Cases the Heir shall have his Age, and where not, in 3 *Bulst. Herbert* against *Binion*, from p. 134. to 146.

If the Question upon a Writ of Error brought to reverse a Fine or Recovery for Nonage, be, Whether the Party be of full Age, or within Age? it shall be tried by the Court by Inspection of the Party during his Infancy, and not by a Jury. *Hill. 22 Car. 1. B. S.* But there must be other concurrent Proof made to the Court, as well as by viewing the Party, viz. by producing the Parish-Register-Book where the Person was christened, and also Affidavits of some Persons who can swear to the

the Time of the Birth: For the Court may be deceived, if they should rely only upon the View of the Party.

Debt is brought against B. upon a Bond, as Heir of A; B. pleads *Riens per Discent præter* a Reversion after the Death of C. The Plaintiff takes his Judgment for Assets, *quando acciderint*; then B. dies, and afterwards C. dies, and the Plaintiff setting forth all this Matter, brings his *Scire facias* upon this Judgment against the Heir and Tertenants of B. The Heir appears and pleads, That he is *Infra Ætatem*, viz. of the Age of eighteen Years, and prays that the Parol may demur, *quousque*, &c. The Plaintiff demurs, and the Court upon Argument were of Opinion, That he should not have it, because Judgment was recovered against his Father, and the Estate was bound thereby, *quando acciderit*, and that this Prosecution was only to have Execution of that Judgment. *Lee's Case, 2 Anne B. R.*

The Heir shall not have his Age where the Recovery was against his Ancestor.

Prayer that the Parol do demur.

The Heir at Law shall be allowed his Nonage upon a Writ of Error, brought to reverse a common Recovery, suffered by his Ancestors, to the Use of himself and his Heirs; and the Parol shall demur, *quousque*, &c. For the Law takes care to preserve the Estates of Infants, who cannot take care of themselves. The Lord Jefferies and his Lady's Case, 5 W. & M. B. R.

Where Nonage shall be allowed to an Heir at Law, and the Parol shall demur, *quousque*, &c.

Where a naked Right in Fee-Simple descends, of which the Ancestor was in Possession, there in an Action Ancestrel, brought by the Infant, the Parol shall demur without Plea; but the Parol shall not demur without Plea where the Ancestor died seized. 6 R. 3. b. 4. a.

Where the Parol shall demur without Plea, and where not.

In all Actions brought by an Infant upon his own Possession, the Parol shall not demur. 6 R. 3. a. Cro. Jac. 467. Neither shall it demur in a Writ of Dower, because the Widow may die before the Heir comes of Age. 5 H. 5. 13. Nor in a *Quare Impedit*, because a Lapse may be before he comes of Age. 3 Bulstr. 131.

It shall not demur upon the Infant's own Possession.

Nor in a Writ of Dower.

Nor in a *Quare Impedit*.

An Infant shall not have his Age in a Writ of Affize, because it is of his own Wrong, and there shall be no Delays in this Writ. 31 E. 3. 27.

Nor in an Affize.

Nor in a Writ of Partition. 6 Rep. 4. b. Hob. 242.

Nor in a Writ of Partition.

Parol-Demur shall not be granted against an Infant, when any Inheritance descends to him after the Death of any of his Ancestors. See Title Parol-Demur, and 6 Ed. 1. cap. 2.

Where a Parol-Demur shall not be granted against him. 6 Ed. 1. cap. 6.

In a Writ of Debt against an Heir he shall have his Age, because at his full Age he may discharge himself by pleading of *Riens per Discent*, or a Release of his Ancestor. 2 Inst. 89. Danvers's Abr. 259.

But he shall have it in Debt.

Where there is Baron and Feme, the Parol shall demur for the Nonage of the Feme, though the Baron is of full Age; but it shall not stay for the Nonage of the Baron. See Dyer 137. pl. 24. 18 E. 3. 33.

Where the Feme shall have it, not the Baron.

Agreement.

An Infant Purchaser shall not have it.

If an Infant be in by Purchase or Abatement, he shall not have his Age. *Carter 88.*

See more upon this Head in the *General Abridgment*, Title Age, from *Fol. 253. to 269.*

Agreement.

Agreement, See Discharge.

Agreement, what.

A

Crementum est aggregatio Mentium in re aliqua facta vel facienda, viz. An Union, Collection, Copulation and Conjunction of two or more Minds in any Thing

done, or to be done. 1 Plow. 17. a. See more for Agreements executed and executory in Title Agreements in *Terms of the Law*.

A forced Agreement is no Agreement, nor will the Court compel the Performance of it.

A forced Agreement of the Party is accounted to be no Agreement; and therefore the Court will not compel him that did thus agree to a Thing, to perform his Agreement; (22 Car. 1. B. R.) For the Law abhors all Force and Violence.

A Parol Agreement, before it is broken, may be made void by Words only, without Satisfaction; but after broken, it cannot, and why.

An Agreement made between the Parties, only by Parol, may be discharged and made void at any Time, before it is broken, by Parol only, without Satisfaction; for, *eodem modo quo oritur, eodem modo dissolvitur*: But after it is broken, it cannot be discharged without Satisfaction. (22 Car. 1. B. R.)

For by the Breach there is a Wrong done to the Party, which the Words cannot release without Satisfaction: but before the Breach, no Injury was done to either Party, nor any of them injur'd by such a Discharge.

A Parol Agreement reduced into Writing is thereby discharged; and an Action for Non-performance must be brought on the written Agreement.

If an Agreement made by Parol to do any Thing, be afterwards reduced into Writing, the Parol Agreement is thereby discharged: And if an Action be brought for the Non-performance of this Agreement, it must be brought upon the Agreement reduced into Writing, and not upon the Parol Agreement: (*Pasch. 22 Car. 1. B. R.*) For both cannot stand together, because it appears to be but one Agreement; and that shall be taken which is the later, and reduced to the greater Certainty by Writing: For, *Vox emissa volat, litera scripta manet.*

Every

Every Agreement ought to be perfect, full and compleat; for it is the mutual Consent of the Parties, and ought to be executed with a Recompence, or else to be so certain as to give an Action or other Remedy for a Recompence.

1 Plow. 5. a.

A Parol Agreement can't dispense with a Bond, though not forfeited. *Cro. El. pl. 8.*

An Agreement without Satisfaction is to no purpose. *Cro. Car. 193. pl. 3.*

A voluntary Agreement is not binding in Equity, unless all be performed. *Chanc. Rep. 302.*

Where *Pro* amounts to a conditional Agreement, and how to lay an Action upon mutual Promises. 2 *Lev. 23.*

The Plaintiff and Defendant may (by Agreement between them) give Money equally to the Jury to defray their Charges where the Trial is put off, they by that Means being forced to stay longer in Town than they expected. (*Mich. 1649. B. S.*) For by doing this the Jury cannot be intended to be made more favourable to one Party than the other. So likewise they do where there is a View; and also give them a Treat at equal Charges.

If the Plaintiff's Attorney and the Defendant's Attorney do agree to Things in order to the Proceedings in their Clients Cause, which are not manifestly prejudicial; tho' the Clients do afterwards refuse to consent to their Agreement, yet the Court will compel the Performance of it. For as they are Attorneys, the Law allows them to make such Agreement; and if the Clients should avoid them afterwards, it would be mischievous in Delay of Justice. *Per Rolle, C. J.*

No Action shall be brought to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate, or to charge the Defendant upon any special Promise to answer the Debt, Default or Miscarriage of another Person, or to charge any Person upon any Agreement made upon Consideration of Marriage, or upon Contract, or Sale of Lands, or Interest therein, or upon any Agreement not to be performed within a Year, unless the Agreement whereupon the Action shall be brought, or some *Memorandum* or Note thereof shall be in Writing, and signed by the Party charged, or some other Person to be by him authorized thereunto by the Statute of 29 *Car. 2. cap. 3. Of Frauds and Perjuries.* See Title *Assumpsit* and *Executors.*

No Contract for Sale of Goods for 10 *l.* or upwards, shall be good, except the Buyer accept of the Goods sold, or give something in Earnest, or some Note or *Memorandum* in Writing of the Bargain be made and signed by Parties, or their Agents lawfully authorized. 29 *Car. 2. cap. 1.*

Agreement, how to be.

A Parol Agreement can't dispense with a Bond.

An Agreement without Satisfaction signifies nothing.

Where a voluntary Agreement is not binding in Equity.

Pro is a conditional Agreement.

Where the Plaintiff and Defendant may give Money to a Jury.

Agreement between the Attorneys, not manifestly prejudicial to their Clients, shall be performed.

No Agreement to bind Executors or Administrators upon any special Promise: Nor Marriage Agreements, or Sale of Land, &c. unless in Writing.

Statute of Frauds and Perjuries. 29 *Car. 2. cap. 3.*

Contracts for 10 *l.* and upwards, void, unless giving of Earnest, or a Note in Writing.

Where

Aid and Aid Praier.

Where an Estate shall be in the Party before Agreement until disagreed unto.

Where an Estate is given to one by a lawful Act, it shall be adjudged in the Party before Agreement, until it be disagreed to. 2 Leon. Case 97.

Aid and Aid Praier.

Aid-Praier. Quid.

When Tenant for Life, Tenant in Dower, or by the Courtsey, &c. is impleaded; then for that they have only an Estate for Life, they shall pray in Aid of him in the Reversion.

A Tenant for Life, or Tenant in Dower may pray in Aid of all such Persons as are in Remainder of Estate in the Lands for which he is impleaded: 1649, 21 Julii, B. S. For they are all concerned by Reason of their several Interests to defend the particular Estate upon which their Remainders do depend.

When two claim from the same Person there shall not be Aid; and why.

The Reason of granting Aid in the Case of the King.

In what Actions to be granted.

Where upon a general Allegation for Lessee for Life.

Where hors de son Fee pleadable.

Special Matter disclosed, he shall have it of his Lessor who is Veray Tenant. 9 Rep. 21. a, b, &c.

Tenant in Tail may have Aid of the King, not of a Common Person.

A Reversioner may pray to be received.

Aid-Praier in a Formedon.

Where two claim from one and the same Person, neither of them shall have Aid of him, for his Interest is saved whosoever of them recovers; and therefore to grant the Aid to him when his Interest cannot be lost, would be in vain. 2 H. 7. 12.

The Reason of granting Aid where the King's Tenant is sued in a *Clausum fregit*, is, because there may be a Prejudice come to the King, and by common Intendment the Freehold is the Cause of the Action; but the King's Grantee in Fee shall not have it, neither doth it lie in any Action where the Freehold cannot be intended to be the Cause of the Action. Danv. Abr. 269.

Upon a general Allegation that a Stranger was seized in Fee, and leased to him for Life or Years, he shall not have an Aid-Praier. Because it would be in vain to grant it, when the Lessee may plead hors de son Fee, as well as his Lessor. But upon

Special Matter disclosed, he shall have it of his Lessor who is Veray Tenant. 9 Rep. 21. a, b, &c.

Tenant in Tail shall have Aid of the King but not of a Common Person. Cro. El. 417. pl. 12.

A Reversioner may come in by Aid-Praier, or else may come in voluntarily, and pray to be received. Lutw. 865. a.

See the Law upon Aid-Praier in a Formedon. Lut. 860, to 865.

Aid and Aid Praier.

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The Court refused to grant an Aid-Praier for the King's Tenant in Ejectment, because he may have a *Rege Inconsulto* at any time before Verdict, without an Aid-Praier. *Mich. 33 Car. 2. See Cro. El. 417.* He may have a Writ *de Rege inconsulto*.

Not for the King's Tenant in Ejectment.

If the King's Farmer be sued upon his own Grant, made by him after the Grant of the King, he shall not have Aid. *1 Rol. Abr. 165. Pl. 1.*

Where the King's Farmer shall not have it.

In a *Rege Inconsulto*, a sufficient Cause of Aid must appear in the Writ, else it shall not be allowed. *2 Inst. 269.* But if the Writ contains a sufficient Cause, this is not traversable, nor to be denied, but in Chancery, from whence the Writ comes. *1 Rol. Rep. 208, 209, 289. 1 Roll. Abr. 159.*

A sufficient Cause for Aid must appear in a *Rege Inconsulto*.

Where tryable.

Where the Letters Patents, or other Cause of Aid-Praier, are void, Aid shall not be granted. *2 Inst. 269. 1 Roll. Abr. 155. Pl. 10. in Margine.*

Where Aid shall not be granted where the Title is void.

The King's Tenant at Will shall have Aid of the King. *4 H. 6. 11.* Also the King's Copyhold-Tenant shall have it. *1 Roll. Abr. 158. Pl. 2.*

The King's Tenant at Will, and Copyhold Tenant, shall have it.

No Person shall pray in Aid of the King, who is not privy to the King's Grant. *Danv. Abr. 178. K.*

None but Privies shall have it.

For the several Ways of Praying, and having Aid. See *1 Rol. Rep. 206, 208, 293. Moor 844.*

The several Ways of praying and having Aid.

Upon the Aid-Praier, or a Writ *de Rege Inconsulto*, the Award is, *quod Tenens seu Defendans sequatur penes Dominum Regem*; and the Tenant or Defendant ought to remove the Record into Chancery.

How the Award is upon Aid-Praier, or a Writ *de Rege Inconsulto*.

In case of an Aid-Praier, the Plea is not put *sine Die*. *Ibidem.*

2 Inst. 269.

The Plea is not put *sine Die*.

Aid lies in an Ejectment for the Defendant when the Title comes in Question: Also it shall be granted for a Defendant in Trespass, because he is to be charged with Damages. *Danv. Abr. 286.* So also for a Bailiff to the Lord of a Town: And so for Tenant at Will. *Ibidem.*

It lies in Ejectment.

Where in Trespass.

For a Bailiff.

For a Tenant at Will.

For Lessee for Life.

Where Defendant, Lessee for Life, shall have Aid of the Lessor, or him in the Reversion, tho' he may vouch him. *Danv. Abr. 291.* As also Tenant by Courtesy, and Tenant in Dower. *Ibidem 287.*

For Tenant by Courtesy.

For Tenant in Dower.

In Trespass for cutting of Trees, Defendant justifies for Common of Estovers, as Lessee for Years to J. S. by Prescription: If Issue be, whether he cut them down of his own Wrong, or for the Cause aforesaid? the Defendant shall not have Aid, because the Issue is all in the Personality. *21 E. 3. 41.* But if Issue had been taken upon the Right of Estovers, he should have had it. *Danv. Abr. 291.*

Not grantable where the Issue is all in the Personality.

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Aid and Aid Praier.

It lies not in Trover;
and why.

Where a *Respondeas
Ouster*, and where Judg-
ment.

When Aid-Praier lies
for a Common Person in
a Personal Action.

It lies not in Trover, because it is a personal
Action, and for a Chattel only. *Cro. Eliz.* 693.
Foxley versus Annesley, and not local. *Mod. Cases.* 785.
Where a Plea is sufficient and Aid is denied,
there shall be a *Respondeas Ouster*; but where it is
insufficient there shall be Judgment. *Mo. Case.* 785.

In Personal Actions, Aid doth not lie of a
Common Person till after Issue joined upon the
Right of the Matter, but not upon the Gene-
ral Issue; because it doth not appear to the Court, whether the Right
will come in Question or no; and if it doth not, there is no Cause
of Aid. *Hard.* 179. It cannot be prayed in another Term after Im-
parlance. *Ibidem.*

In Real Actions, Aid-Praier of a Common
Person lies before Issue joined; because there the
Title of him in Reversion or Remainder appears by the Plea. *Ibidem.*
For without shewing, he cannot draw his Plea.

Tenant in Tail shall
not have it. Tenant in Tail shall not have Aid of him
in the Remainder in Fee, for that he himself
hath an Inheritance. *1 Rok. Abr.* 187. Pl. 2.
Lessee for Life, Remainder in Tail, Remainder in
Fee, the Lessee shall have Aid of both Remainders
at one time; because they begin together, and de-
pend upon the first Estate. *11 H. 4. 63. b. Danv.* 299.

See the whole Learning on this Head in the *Gen. Abridg. Tit.*
Aid of the Queen, &c. from fol. 269, to 321.

Alien.

Alien.

See Denizen.

OF Aliens, who are Persons born out of the King's Allegiance, there are two sorts, viz. Alien Friends, which are of those Countries which are in Peace and League with us; and Enemies, who are of those Countries which are in War with us.

Aliens, who are.

The several Statutes relating to Aliens. 1 R. 3. cap. 9. 14 H. 8. cap. 2. 21 H. 8. cap. 16. 5 Eliz. cap. 4. 32 H. 8. cap. 16.

The several Statutes relating to Aliens, 1 R. 3. cap. 9. 14 H. 8. cap. 2. 21 H. 8. cap. 16. 5 Eliz. cap. 4. 32 H. 8. cap. 16.

By an Act made at the Parliament held 29 Car. 2. cap. 6. For the Naturalization of Children of His Majesty's *English* Subjects born in foreign Countries during the late Troubles,

For naturalizing of the King's Subjects born beyond Sea, and how it is to be.

See the Statute, who are particularly naturaliz'd, and how, and in what Manner all others shall be naturaliz'd.

29 Car. 2. cap. 6.

It is the Place of the Birth that makes the Disability of an Alien to have Lands; the Blood is not the Disability, but Place of the Birth. *Cro. Jac.* 539. pl. 7. See *Co. Lit.* 8. a.

It's the Place of the Birth that makes the Disability, not the Blood.

If an Alien hath a Son Alien, and afterwards the Father is made a Denizen, and hath another Son; here the second Son shall inherit, tho' the elder Son be alive. *Cro. Jac. Ibid.*

An Alien hath an Alien Son, and then the Father is made a Denizen, and then hath another Son, the second Son shall inherit.

Regularly there are two Incidents necessary to make a Subject born; First, That his Parents at the Time of his Birth be under the actual Obedience of the King: Secondly, That the Place of his Birth be within the King's Dominions. 7 Rep. 18.

Who shall be said to be an Alien, and who a Subject.

a. Calvin's Case.

Those which were born in *Normandy*, and under the actual Obedience of the Kings of *England*, were Subjects born. 7 Co. 20. b. So are those which are now born in the *English* Plantations. *Vaugh.* 297.

Foreign Plantations.

All Persons to be naturaliz'd must take the Oath of Supremacy and Allegiance, and receive the Sacrament.

7 Jac. 1. cap. 2.

Children of Ambassadors are Natural-born Subjects.

Natural-born Subjects.

Where a Merchant's Child born beyond Sea shall be a Denizen.

And also in *Cro. Car.* 601. pl. 5. 602.

An Alien may purchase, but the King after Office shall have it.

How an Alien-born may be pleaded.

How in Abatement.

And how in Bar.

Indigena, born at C. in Com. D.

Traverse.

Nativitate: And the Plaintiff must take Issue upon this Traverse. *Rast.* 549. b. 550. a. *Mich.* 8 W. B. R.

Devise of Lands to an Alien, is void.

Plaintiff's Testator an Alien.

Replication, that he came here by the King's Licence.

Continuance amounts to a Licence.

if he comes in Time of War, and hath continued here without Disturbance, it shall be intended that he came here with a Licence. *Lutw.* 34, 35.

No Person of 18 Years old or upwards shall be naturaliz'd or restor'd in Blood, unless they have received the Sacrament within a Month before the Bill exhibited, and taken the Oath of Supremacy and Allegiance.

If one of the King's Ambassadors in a Foreign Country hath Issue there by his Wife, being an English Woman, by the Common Law they are

An English Merchant living beyond Sea for merchandizing, marries a Wife there, and hath a Child by her, and dies; this Child is born a Denizen, and shall be Heir to him; and it is not material, though his Wife be an Alien, says *Cro. Car.* 605. pl. 5. 602. Says *March* 91. the Issue shall be a Denizen, though he marries an Alien.

An Alien may purchase Lands, but the King upon Office found shall have it. *Co. Lit.* 2. b. But nothing vests in the King till Office. 1 *Leon.* 47. 4 *Leon.* 82.

An Alien-born may be pleaded in Abatement or Bar; if it be pleaded in Abatement, the Plaintiff may reply, That he is *Indigena*, born at B. in Com. S. and not *Alienigena*, & hoc petit quod inquiretur per Patriam, &c. *Rastal's Entries* 244. a. & *Mich.* 8 W. B. R. See *Calvin's Case.* 7 R. 1. 9. b. But where the Defendant pleads in Bar, That the Plaintiff is an Alien-born, there the Plaintiff must reply, That he is

Indigena, born at C. in Com. D. And then the Defendant must again say, That the Plaintiff is an Alien, born at Roan, &c. beyond the Seas. Absque hoc That he is *Anglicus de*

A Devise of Land to an Alien is void. 1 *Lev.* 59.

The Defendant pleads in Bar, That the Plaintiff's Testator was an Alien: The Plaintiff replies, That from the making of the Bond to his Death, he remained in England by the King's Licence: And the Replication held good, because it doth not appear but that the Testator came into England in Time of Peace, and hath for all that Time quietly continued there, which shall amount unto a Licence: So also if he comes in Time of War, and hath continued here without Disturbance, it shall be intended that he came here with a Licence.

There

There is an Act made 9 & 10 W. cap. 20. for the Naturalization of the Children of such Officers and Soldiers, and others the Natural-born Subjects of this Realm, who have been born abroad during the War with France, the Parents of such Children having been in the Service of the Government.

An Act for naturalizing of the Children of Soldiers born beyond Sea. 9 & 10 W. cap. 20.

The Manner how it is to be done, and when, and where. *Ibid.* Sect. 4 & 5.

How and when to be done.

By an Act made 11 & 12 W. cap. 6. Intituled, *An Act to enable His Majesty's Natural-born Subjects to inherit the Estates of their Ancestors, either Lineal or Collateral, notwithstanding their Father or Mother were Aliens, It is enacted,* " That all and every Person

The Act of 11 & 12 W. cap. 6. to enable his Natural-born Subjects to inherit the Estates of their Ancestors, Lineal or Collateral, although their Fathers or Mothers were Aliens.

" and Persons, being the King's Natural-born Subjects, within any of his Realms or Dominions, shall and may hereafter lawfully inherit, and be inheritable, as Heir or Heirs to any Honours, Manors, Lands, Tenements or Hereditaments; and make their Pedigrees and Titles by Descent from any of their Ancestors, Lineal or Collateral, although the Father and Mother, or Fathers or Mothers, or other Ancestor of such Person or Persons, by, from, through or under whom, he, she, or they, make or derive their Title or Pedigree, were, or was, or is, or are, or shall be, born out of the King's Allegiance, and out of his Realms and Dominions, as freely, fully and effectually, to all Intents and Purposes, as if such Father or Mother, or Fathers or Mothers, or other Ancestor or Ancestors, by, from, through, or under whom, he, she, or they, shall or may make or derive their Title or Pedigree, had been naturalized or Natural-born Subject or Subjects within the King's Dominions: Any Law, Custom or Usage to the contrary notwithstanding.

By another Act made 7. Anne, Intituled, *An Act for naturalizing Foreign Protestants, It is enacted,* " That all Persons born out of Her Majesty's

The Act for naturalizing Foreign Protestants.

7 Ann. Reg.

" Ligeance, who shall take and subscribe the Oaths, and make and repeat the Declaration appointed by an Act made in the 6th Year of Her Majesty's Reign, Intituled, *An Act to make further Provision for electing and summoning sixteen Peers in Scotland, to sit in the House of Peers in the Parliament of Great Britain, and for trying of Peers for Offences committed in Scotland, and for the further regulating of Voters in Elections of Members to serve in Parliament,* which Oath shall be taken and subscribed, and Declaration made, repeated and subscribed in the Courts of Chancery, Queen's Bench, Common Pleas, or Exchequer, in Term-time in England, or in any of them, in open Court, or before the Lords of Council and Session, or Lords Justiciary, or Barons of the Exchequer, in open Court, in Scotland, or at some General Quarter-Sessions of the Peace for the County where they shall inhabit, between the Hours of Nine and Twelve in the Forenoon,

6 Ann. The Oath to be taken.

The Subscription and Declaration.

In what Courts.

Or at the Quarter-Sessions of the Peace.

“ noon, the taking and subscribing of which Oaths, and the making,
 “ repeating and subscribing such Declaration, shall be enter'd on Re-
 “ cord in the same Courts, for which only one Shilling is to be paid,
 “ then every such Person shall be adjudged and taken to be Her Ma-
 “ jesty's Natural-born Subject of this Kingdom, as if born here.

Proviso for their re-
 ceiving of the Sacrament.

Note, It is provided, “ That no Person shall
 “ be naturaliz'd by this Act, who shall not have
 “ received the Sacrament in some Protestant or
 “ Reformed Congregation in this Kingdom of *Great Britain*, within
 “ three Months before their taking of the said Oaths, and must bring
 “ a Certificate thereof, signed by the Person administering thereof, and
 “ attested by two credible Witnesses, whereof an Entry shall be made
 “ without Fee.

Children born beyond
 Sea shall be adjudged
 Natural-born Subjects.

Also, “ That all Children of Natural-born Sub-
 “ jects, born out of the Ligeance of Her Majesty,
 “ shall be adjudged and taken to be Natural-born
 “ Subjects of this Kingdom.

How to be in *Ireland*.

Note, “ There is a Clause for naturalizing in
 “ *Ireland*, in the same manner as here in *Great*
 “ *Britain*.

Aliens shall have no
 Vote in Election of Par-
 liament Men :

But shall have the Be-
 nefit of a Pardon for
 common Offences.

Foreigners are not admitted to the Choice of
 Knights of the Shire, of Burgesses, &c. but shall
 have the Benefit of a Pardon of Offences against
 Penal Laws, and other common Offences, if they
 were here at the Time of the Pardon. *Hob.* 270,
 271.

What an Alien Friend
 may do.

An Alien Friend may trade, buy, sell, and take
 a House to live in, as well as an *English* Man, and
 may maintain any Action for the same : But an
 Alien Enemy cannot. *Terms of the Law*, 27.

What an Alien Enemy
 cannot do.

Cannot take a Lease.
 32 H. 8. cap. 16. sect. 13.

See the Statute of 32 H. 8. cap. 16. sect. 13. which
 makes void Leases made to Alien Artificers or Han-
 dycraft-men, and what Resolutions and Pleadings
 there have been upon this Statute. See 1 *Sid.* 308, 309. 1 *Saund.* 6, 8.
 1 *Sid.* 357. 3 *Mod.* 94.

Neither can an Alien
 Friend, who is not a
 Merchant.

So if an Alien Friend, who is not a Merchant,
 purchaseth a Lease of his House for his Habitation,
 the King shall have it. *Co. Litt.* 2. b.

But an Alien Friend
 may be an Administrator.

An Alien Friend may be an Administrator, and
 shall have Administration of Leases as well as per-
 sonal Things, because he hath them *in Auter Droit*.
Cro. Car. 8. 1 *Ventr.* 417. *Cro. Eliz.* 275. pl. 4. But if there be a Trial,
 it must not be *per medietatem lingue*, because *in Auter Droit*.

No *medietas lingue* up-
 on a Writ of Enquiry.

There shall not be any *medietas lingue* upon a
 Writ of Enquiry of Damages, but only for the
 Trial of an Issue. *Cro. Eliz.* 293. pl. 6.

An Alien Enemy can-
 not be an Executor.

An Alien Enemy can have no Action as Execu-
 tor, tho' it is *in Auter Droit*. *Cro. El.* 142.

An Alien Friend may have personal Actions, but an Alien Enemy cannot have any Action whatsoever. *Co. Litt. 129. b.*

What Actions Aliens may have.

Land was given to an Alien in Tail, Remainder over in Fee to another; the Alien suffered a Recovery, and died without Issue: This Recovery is good, and shall bind him in the Remainder. 4 *Leon. Case 177.*

A Recovery suffered by an Alien, Tenant in Tail, shall bar the Remainder.

Alienation.

Alienation is the making a Thing another Man's; or the altering and putting the Possession of Lands or Tenements, or other Things, from one Man to another. Alienare, id est, alienum facere, vel ex nostro Dominio in alienum transferre, five rem aliquam in Dominium alterius transferre. *Co. Litt. 118. b.*

Alienation, what.

A Lease for Years upon Condition not to alien without Consent: The Lessee devises his Term to A. B. whom he makes his Executor: This is a Forfeiture of the Term; for he ought to have left it to come to his Executor without the Devise of it to him; because the Devise is an Alienation. *Poph. 106.*

A Devise of a Term is an Alienation of it.

Amendment.

Amendment, See, $\left\{ \begin{array}{l} \text{Costs.} \\ \text{Jeofails.} \\ \text{Writs.} \end{array} \right.$

Amendment is, where Error is in the Process, there the Judges may amend it after Judgment. But if there be Error in giving of the Judgment (viz. a wrong Judgment is given) there they cannot amend it, but the Party must bring his Writ of Error; but where the Fault appears to be in the Clerk who writ the Record, it may be amended.

After Plea put in, and before Proceedings enter'd on the Roll, Declaration may be amended by Consent of the Attorneys, or Leave of Court.

Plaintiff may amend his Declaration in Matter of Form after Issue pleaded, without paying Costs, or giving Imparance; but he may not amend the Substance,

give Imparance, *Pasch. 21 Caroli secundi Regis, per Magistrum Livesay, & alios Clericos.*

Plaintiff may amend his Bill before Plea pleaded, but not after without Motion of Court.

Original Writs are not amendable at Common Law.

is dangerous to alter the Foundation of Things.

But the Default of Clerk amendable in many Cases.

Omission of Attorney's Name in the Imparance-Roll, amendable, but not so in the Issue-Roll.

is not amendable. (*Hill. 21 Car. 1. B. R.*) When the Issue-Roll is made up, then the Record is a perfect Record, and it ought not to be amended in that Part, for this would be to alter the Issue.

If the Avowant in Replevin amend his Avowry before Term, and pay Costs, Plaintiff must plead in Bar to his Avowry presently: but if he pay no Costs, he need not plead 'till next Term.

amended, and so he ought not to delay the other Party.

Plaintiff in Replevin may with Leave of Court plead as many several Matters as he thinks fit.

necessary for his Defence.

By Glyn Chief Justice, *Pasch. 1657. B. S.* After a Plea is put in unto a Declaration, and before Entry of the Proceedings upon the Roll, the Declaration may be amended by the Consent of the Attorneys on both sides, or with the Leave of the Court, by Motion in Court, or at the Side-Bar.

That the Plaintiff may amend his Declaration in Matter of Form, after a general Issue pleaded before Entry, without paying Costs, or giving Imparance; but if he amend the Substance, then he must pay Costs, or give Imparance, at his Election; but if he amend after a special Plea pleaded, then he must pay Costs, although he would *Pasch. 21 Caroli secundi Regis, per Magistrum Livesay,*

That the Plaintiff may amend his Bill upon the File, at any time before the Plea pleaded, but not afterwards without Motion of Court, *Pasch. 21. Car. 2. Regis, per Magistrum Livesay, & alios Clericos.*

Original Writs are not amendable at the Common Law; for if the Writ be not good, the Party may have another. *Hill. 22 Car. 1. B. R.* And it is dangerous to alter the Foundation of Things. But by the Statute of 8 H. 6. the Default of the Clerk is in many Cases amendable. See 8 H. 6. chap. 12 and 13. 32 H. 8. c. 13.

The leaving out of the Attorney's Name in the Imparance-Roll is amendable upon a Motion made to the Court to have Leave to do it, but not without Leave of the Court, so that the Attorney's Name be not left out in the Issue-Roll, for then it is not amendable. (*Hill. 21 Car. 1. B. R.*) When the Issue-Roll is made up, then the Record is a perfect Record, and it ought not to be amended in that Part, for this would be to alter the Issue.

If in a Replevin the Avowant do amend his Avowry before the Term, and do pay Costs, the Plaintiff ought to plead in Bar to his Avowry presently; but if he pay no Costs, he is not bound to plead in Bar to his Avowry until the next Term: (*21 Car. 1. B. R.*) For by accepting of Costs, he hath dispensed with the Fault in pleading, which was amended, and so he ought not to delay the other Party.

And by the late Act For Amendment of the Law, the Plaintiff in a Replevin in any Court of Record, with the Leave of the same Court, may plead as many several Matters thereto, as he shall think

Provided, that if any such Matter shall upon a Demurrer joined, be judged insufficient, Costs shall be given at the Discretion of the Court: Or if a Verdict shall be found upon any Issue in the said Cause, for the Plaintiff or Demandant, Costs shall be also given in like manner, unless the Judge who tried the said Issue, shall certify, that the said Defendant or Tenant, Plaintiff in Replevin, had a probable Cause to plead such Matter, which upon the said Issue shall be found against him.

The same Liberty as above for a Plaintiff in Replevin, is allow'd for any Defendant, or Tenant in any Action or Suit, subject to the said Proviso.

Any Fault in pleading which would be amendable if the Cause were depending in an inferiour Court, may be amended where the Cause depends in a superiour Court, but not *é contra*: (21 Car. 1.

B. R.) For inferiour Courts are precisely to keep their Forms in Pleading; and if they err, this Court will not suffer them in many Cases to amend their Pleadings.

A Plea may be amended upon giving of Notice thereof to the other Party, and paying of Costs, if the Plea be only in Paper; but if it be entered in Parchment, it cannot be amended, for then it is a Plea upon Record: (Mich. 22. Car. B. R.) And Records ought not to be amended in material Things, such as a Plea is, for this would be to make it another Record.

The Court of King's Bench will not amend a Transcript of a Record removed thither by a Writ of Error out of an inferior Court, but they will amend a Record removed thither out of the Common Pleas, by the Record in the Common Pleas, if they see Cause (Mich. 22. Car. 1. B. R.) For if they should, this would beget much trouble to this Court, which the Dignity of this Court will not suffer.

If the Plaintiff desire to alter his Declaration, it is in the Election of the Defendant to take Costs of the Plaintiff and to let him amend his Declaration, or refuse to take his Costs, and to imparl to the next Term: (22 Car. 1. B. R. and 1650 B. S.) For in so doing, the Defendant is at no Prejudice by the Amendment; for if he will, he may imparl to advise upon a Plea, fitting the Declaration so amended; or if there be no Cause offered by the Amendment for him to advise, then he may take the Costs and plead.

A Return upon a Habeas Corpus, or upon a Certiorari, to remove Orders of Sessions of the Peace, &c. cannot be amended the Term after the Return is made, but it may be amended the same Term in which it is made: (Hill. 22 Car. 1. B. R.) For the Term after the Return they are filed, and upon Record;

But if such Matter be judg'd insufficient, the Court may give Costs at their Discretion.

So likewise if Verdict for the Plaintiff, except the Judge certify that the Defendant had probable Cause to plead such Matters

Like Liberty allowed for the Defendant.

Faults in pleading amendable in an Inferiour Court, may be amended in a superior; but not *é contra*.

Plea in Paper only may be amended on giving Notice, and paying of Costs, but not if it be in Parchment.

B. R. will not amend a Transcript of a Record removed thither by Writ of Error out of an Inferiour Court; but out of C. B. they will.

If the Plaintiff would amend his Declaration, the Defendant may take Costs and let him; or refuse Costs and imparl to the next Term.

Return upon a Habeas Corpus or Certiorari, not amendable the Term after the Return made, but may be amended the same Term in which it is return'd.

but

but the same Term wherein they are returned, is usually given by the Court to amend and make such Returns perfect if they be erroneous, the Term being but one Day in Law; but in the same Term the Order, Commitment or Indictment it self returned, is not amendable, only the Caption. *Faulknor's Case, Saund. 1. c. 249.*

Clerk of the Peace may amend an Indictment removed into B. R. any Time the same Term it came in, but afterwards it can't be amended.

Quere of the Return of a *Mandamus*.

Plaintiff may amend his Declaration 7 Years after, if it be in Paper; but then he must pay Costs to Defendant, or suffer him to imparl till next Term.

Record amendable after Issue join'd in a small Matter; so the Plea be not alter'd, nor Record defaced.

A Record may not be altered by Consent of Attorneys without Rule of Court: If it be, the Court will order the Record to be made as it was before, and punish the Attorneys.

If Plaintiff amend his Declaration, though by Rule of Court, Defendant may plead *de novo*.

Imparance - Roll not amendable by Plea-Roll; but Plea-Roll is by Imparance-Roll.

The Clerk of the Peace may amend an Indictment removed into this Court at any time during the Term in which it came in here, but afterwards it cannot be amended. (*Hill. 23 C. 1. B. R.*) for the same Reasons as abovesaid; but *Quere*, If the Return of a *Mandamus* be amendable after it is filed, though in the same Term, for that such Amendment hath sometimes been granted, and frequently denied.

The Plaintiff may amend his Declaration, tho' it be seven Years past since he declared, if it be but in Paper, (*Hill. 23 Car. 1. B. R.*) paying Costs, or suffering the Defendant to imparl till the next Term after; for the Defendant is no more prejudiced thereby, notwithstanding the Antiquity of the Declaration, than if the Declaration were but of the Term next preceding.

A Record may be amended in a small Matter after Issue joined, so that thereby the Plea be not altered. (*Trin. 24 Car. 1. B. R.*) Nor the Record much defaced thereby; for Records ought to be fair and plain to be read.

A Record may not be altered by Consent of the Attorneys on both sides, without a Rule of the Court; and if it be, if the Party grieved thereby will inform the Court of it, the Court will order to make the Record as it was before the Amendment, and will punish the Attorneys: (3 *Julii* 1650. *B. S.*) For the Judges have the prime Custody of the Records of their Court, and they are to be ordered by their Directions, as being things of a high Nature, in respect both of the Commonwealth, and also of private Interest in the Parties concerned.

If the Plaintiff amend his Declaration, though it be by the Rule of the Court, yet the Defendant may plead *de novo*; else it might be mischievous to him, for the Amendment may make a good Plea bad.

The Imparance-Roll cannot be amended by the Plea-Roll, but the Plea-Roll may be amended by the Imparance-Roll. (*Mich. 22 Car. 1. B. R.*) For the Imparance-Roll is first made, and is the Warrant of the Plea-Roll.

The Court amends false *Latin* and Forms in Bills presented unto them by the Grand Enquests by their Consents, but they may not alter Matters of Substance in them. (*Mich. 22 Car. 1. B. R.*) It is sufficient for the Grand Enquest to find the Matters of Substance well; for though they be usually Men of good Rank and Quality, yet it is not intended that they are always good Clerks, or learned in the Law.

The Plaintiff may amend his Declaration after the Defendant hath pleaded to it, paying Costs if it be entred; but if he do amend it, the Defendant may also alter his Plea if he will. *Mich. 22 Car. B. R.*

Any Issue entered upon Record, may upon Leave by the Court be amended in a small Matter, but not in a material Thing, or in that which will deface the Record. (*Hill. 22 Car. 1. B. R.*) For the former would be to make another Record of it, and the latter would be to deface the Record, neither of which the Law allows.

A Thing that is amendable by Statute, may be amended in a superior Court, before it be amended in the inferior Court, if the Matter be apparent and needs no Examination. *Hill. 22 Car. 1. B. R.*

The Statutes of *Jeofails* are now adjudged to extend to inferior Courts. *Walwyn and Smith, Phylor and Boson, B. R. W. & M.*

By the late Act for the Amendment of the Law, 4 & 5 *Annæ Reginae*, It is enacted, That all Statutes of *Jeofails* shall be extended to Judgments, which shall not any time afterwards be entred upon Confession, *Nihil dicit* or *non sum informatus*, in any Court of Record, and no such Judgment shall be recovered, nor any Judgment upon any Writ of Inquiry of Damages executed thereon, be stay'd or reversed, for or by reason of any Imperfection, Omission, Defect, Matter or Thing whatsoever, which should have been aided and cured by any of the said Statutes of *Jeofails*, in case a Verdict of twelve Men had been given in the said Action or Suit, so as there be an original Writ or Bill, and Warrants of Attorney duly filed according to the Law as is now used. Also, That this said Act and all the Statutes of *Jeofails* shall extend to all Suits in any of His Majesty's Courts of Record at *Westminster*, for Recovery of any Debt immediately owing, or any Revenue belonging to His Majesty, his Heirs or Successors, and shall also extend to all Courts of Record in the Counties Palatine of *Lancaster*, *Chester* and *Durham*, and the Principality of *Wales*, and to all other Courts of Record within this Kingdom.

The Court will amend false *Latin* and Forms in Bills presented by the Grand Enquest with their Consents, but may not alter Matters of Substance.

Plaintiff may amend his Declaration after the Defendant has pleaded to it: But if he do, Defendant may alter his Plea.

Issue on Record may by Leave of Court be amended in a small Matter, but not in one that is material, or that will deface the Record.

What is amendable by Statute may be amended in a superior Court, before in the inferior.

Statutes of *Jeofails* extend to inferior Courts.

As also to Judgments not enter'd on Confession, &c.

Statute of *Jeofails* to extend to all Suits in the Courts of *Westminster* for Recovery of Debts due to the King.

Likewise to the Counties Palatine of *Lancaster*, *Chester* and *Durham*, and to the Principality of *Wales*.

Plea not amendable after Demurrer or Issue joined: But if Demurrer be in Paper, it may be amended, though two or three Terms after, if the Party demurring will pay Costs.

Plea was demurred unto, the Demurrer may be amended, if the Party demurring will pay Costs, though the other Party have joined in Demurrer. 21 Nov. 1650. B. S. For by paying of Costs the Plaintiff receives Satisfaction for his Delay, and dispenseth with the Proceedings in Court.

Retorn of *Habeas Corpus* amendable in matter of Form only, the same Term it was returned, but not afterwards.

Nor may it be amended in matter of Substance.

The original Record was not formerly brought out of B. C. into B. R. till B. R. had agreed to amend it.

If C. B. amend a Record, not amendable by Law, B. R. will refuse it.

preme Court, and will take notice of the Proceedings of other Courts no farther than they agree with the Law.

After Plea pleaded, and Jury return'd, Defendant can't alter his Plea without Leave of Court: But before Jury returned, if Declaration and Plea be only in Paper, the Party may by Rule of Court amend it, on paying Costs or giving Imparlance.

A Record cannot be amended after a Verdict.

the Authority of a Judge in the trying of the Cause, (*Mich. 8. W. R.*) where the Amendment is in a material Point.

No Amendment of a Declaration after a Verdict.

A Plea cannot be amended after the Plea is demurred unto, nor after Issue joined. (*Mich. 25 C. 1. B. R.*) For that were to go backwards; and to hinder the Plaintiff's Proceedings, which the Law will not suffer; yet if the Demurrer be put in Paper, though it be two or three Terms after the

A Retorn of a *Habeas Corpus* may be amended in matter of Form only, the same Term the Retorn was made, but not afterwards. (*Trin. 1651. B. S.*) It may not be amended in matter of Substance, for this would be to make another Retorn.

It was not the ancient course of Practice to bring the original Record out of the Common Pleas into this Court to amend the Transcript thereof by, until this Court had agreed it should be amended.

This was observed to avoid needless Charge, which might otherwise fall out to the Client, (*Pasch. 1652. B. S.*) by bringing the Record hither to no purpose.

If the Common Pleas do amend a Record there, which is not amendable by Law, this Court is not bound to receive the Record so amended, but will refuse it. (*Trin. 1652. B. S.*) For this is the su-

preme Court, and will take notice of the Proceedings of other Courts no farther than they agree with the Law.

After the Plea pleaded, and the Jury returned, the Defendant may not alter his Plea without moving of the Court. But before the Jury is returned, if the Declaration and the Plea be only in Paper, the Party may by Rule of the Court amend his Declaration, paying Costs, or giving an Imparlance. By *Herne Secondary, Mich. 1655. B. S.* For the Jury is returned to try that which was joined when they were returned, which they cannot do if it be altered.

It is a Rule at the Common Law, that you shall never amend a Record after a Verdict, whereby to make the Jury attainted, or to take away the Authority of a Judge in the trying of the Cause, (*Mich. 8. W. R.*) where the Amendment is in a material Point.

In an Ejectment which was tried at the Bar, the Demise was laid to be in 1696, whereas it should have been 1697; and after a Verdict for the Plaintiff, it was moved, that the Declaration should be

be amended and made right, but was strongly oppos'd, and at last denied by the Court to my Knowledge. See many good Cases to this Matter, 5 Mod. 332, 333, 334, 335.

After a Verdict in Trespas, the Blanks in the Imparlance-Roll in C. B. were amended, and made to agree with the Declaration, and good. *Latch* 154, 155, 156.

The Imparlance-Roll amended after Verdict.

But in an Action of Words it's said, That *William dixit de præfat. Jacobo*, he præfat. *Willielmum*, whereas it should have been, præfat. *Jacobum*; and after Verdict the Bill and Roll being Right, and it only appearing to be a Misprision of the Clerk, it was order'd to be amended. *Cro. Jac.* 157. pl. 8.

A Name amended in the *Nisi prius* after Verdict.

A Fault in returning of the *Postea* in the Words of the Verdict was amended after a Writ of Error brought. *Cro. Jac.* 185. pl. 5.

A Fault in the Words of a Verdict amended after Error.

Upon an Indictment for a Nuisance, and upon a Verdict upon Not guilty it appeared, that the Clerk of the Peace had not joined the Issue; but it was ordered to be amended, and the Words, *Et Richardus Waster* (who was then Clerk of the Assizes) *qui pro Domino Rege sequitur similiter*, &c. to be interlined. *Cro. Jac.* 502. pl. 12.

An Indictment amended by the Addition of the joyning of the Issue for the King.

The Court will not suffer the Entry of Judgments in inferior Courts to be amended. *Cro. Jac.* 502. pl. 2.

Court will not suffer Judgments in inferior Courts to be amended.

A Special Verdict was amended after Entry upon the Roll, by an Entry of a Lease by Indenture, found by the Jury in the Notes, but not put in to the Verdict. 4 Rep. 52. b.

Where a Special Verdict may be amended after Entry upon the Roll.

Note, In all Rules where there is mention made of Amendment upon Payment of Costs; the Intent of the Rule is, to pay such Costs as the Secondary shall tax.

Upon Amendment on Payment of Costs, the Secondary must tax them.

Where the Curfitor mistook in an Original varying from his Instructions, as appeared by the Oaths of the Plaintiff's Attorney, and of the Curfitor; this Original is amendable at the Common Law, and so ordered. 8 Rep. from 150. to 153. But if he had not varied from his Instructions, it could not have been amended.

An Original varying from the Instructions, amendable.

The Word *Ostensus* inserted in a Writ of Partition, and the Word *Ave* in a Writ of Aile made *Avia*; but want of Form in an Original is not amendable by the Statute, *Moor, Case* 17.

Where Originals are amendable, and where not.

At the Common Law, the Judges may amend as well their Judgments, as any Part of the Record, in the same Term; for in the same Term the Record is in the Breasts of the Judges, and not in the Roll; but of another Term they could not, until the Statute of 14 E. 3. cap. 6. *Vide* 8 Rep. 156. b. 157. a. Now the common Practice in C. B. is to

Judges may amend their Judgments, or any Part of the Record, the same Term.

14 E. 3. cap. 6.

amend

amend a Judgment, though of another Term, which the Court says is their own Judgment, and therefore if it be not well entred, they will order it to be so, upon Payment of Costs, if a Writ of Error be brought thereupon.

What Matters are amendable at the Common Law, and what not.

The Mistake of a Name in an Issue amended after Verdict.

Mistake. *Curia*. It is only the Default of the Clerk, and amendable. *Cro. Jac.* 67. pl. 7.

So where in a Plea the Plaintiff's Name was put for the Defendant's.

So a Name in a *Distringas Jur.* was amended after a Trial.

The Issue Roll may be amended by the Imparlance-Roll; but the Imparlance-Roll can't by the Issue-Roll.

Judicial Writs have been often amended after Trial.

A *Præcipe* in a Recovery amended.

What Misprisions are not remedied.

The Court will not order the Amendment of a Writ of Error, for the reversing of a Judgment.

No Amendments to reverse or defeat a Judgment.

Amendment in another Term upon a *Quo Warranto*.

A *Postea* amended upon the Memory of the Judge who tried the Cause.

What Things are now amendable at the Common Law, and what not; see the whole Case, 8 Rep. 156. See also in this Title of Amendments, and Title *Jeofails*.

The Plaintiff in his Replication mistakes the Defendant's Christian Name, and after Verdict moved, that there was not any Issue joined because of the

And so it was in a Plea, where the Plaintiff's Name was mistaken for the Defendant's. *Cro. Jac.* 444. pl. 22.

A Name mistaken in a *Distringas* was amended after a Trial by *Nisi prius* in London. *Cro. Car.* 32. pl. 2.

The Issue-Roll shall be amended by the Imparlance-Roll, because it is precedent; but the Imparlance-Roll shall not be amended by the Issue-Roll, being subsequent. *Cro. Car.* 92.

Judicial Writs have been often amended according to the Roll, but the Roll was never amended. 8 Rep. 157. a. *Cro. Jac.* 162.

A *Præcipe* in a Recovery obliterated, was ordered to be amended by the other Parts of the Record. 8 Rep. 160. a.

What Misprisions are not remedied, and what Acts do not extend to them. 8 Rep. 162. a. 8 H. 6. cap. 12, 15.

The Court will not order a Curfitor to amend a Writ of Error, which is for the reversing of a Judgment. But where it is to make good a Judgment, they will do it; so also they will do in case of an Original. *Pasch.* 12. W. 3. B. R. 5 Mod. 16, 59.

No Statute gives Amendments, but only in Affirmance of Judgments and Verdicts, and not in reversing or defeating of them. 1 Leon. 134. Case 184. 5 Mod. 16, 69.

Amendment in another Term upon a *Quo Warranto*. *Cro. Car.* 144. pl. 22.

A Retorn of a *Postea* was amended upon the Memory of the Judge who tried the Cause. *Cro. Car.* 338. pl. 25.

The Entry of the King's Silver was amended upon the Roll after a Writ of Error brought, and several Precedents of Amendments were produced.

5 Rep. 43. b.

Mistakes in the Returns of Writs, Fines, and Recoveries, which are common Assurances had by mutual Consent of Parties, are amendable. 5 Rep.

55. b.

In a Common Recovery by the Mistake of a Clerk, *Isfield* for *Ifield* was amended after a *Formedon* brought. 5 Rep. 46. a.

Note, After Trial, and before Judgment entred, the Plaintiff's Attorney filled up the Blanks for the Day and Year in the Imparlance-Roll without Leave of the Court, and held good: But if a Judgment had been entred on the Roll, then it could not have been done without Leave of the Court; but the Court may, if they think fit, amend. *Worsley's Case*, *Latch* 154, to 156.

It was moved after Verdict for a new Trial, because after a Plea pleaded, the Plaintiff had amended his Declaration in a material Point, and therefore the Defendant made little Defence. *Curia*. If the Defendant had made a full Defence, he had lost the Benefit of taking Advantage of the Alteration. 6 W. & M. B. R.

The Plea-Roll and *Nisi prius* were, *Et prædictus Defendens similiter*, &c. whereas it should have been, *Et prædictus Querens similiter*, &c. And after a Verdict, it was ordered to be mended. Because it appeared plainly to the Court to be the Fault of the Clerk, and so within the Statute of 8 H. 6. cap. 15. of Amendments. 7 W. & M.

In an Action of Debt for Tithes the *Jurata* was in *placito transgressionis*, instead of in *placit. deb.* and after great Consideration ordered to be amended, *Cro. Car.* 274. pl. 12. But the Clerk of the *Nisi prius* was fined forty Pound for this Mistake; and the Attorney who amended it before the Court order'd it, was committed to Prison. *Cro. Car.* 278. pl. 17.

Where the Exception is to the Form of the Entry of the Judgment, the Court may order it to be made right: Because it is their own Judgment.

In an Ejectment the Judgment was entred for all the Lands in the Declaration: Whereas part was found for the Plaintiff, and part for the Defendant; and after great Consideration ordered to be amended. *Cro. Jac.* 631. pl. 5, 632, where see very many Cases of Amendments.

Entry of the King's Silver Roll amended after Error.

Mistakes in Returns of Writs, Fines, and Recoveries are amendable.

A Recovery amended.

Where amendable after Verdict, and before Judgment.

Where a Declaration is amended, after Plea pleaded.

The Plea-Roll, and *Nisi Prius*, amended after Verdict for a Default of the Clerk.

8 E. 6. cap. 15.

The *Jurata* ordered to be amended and made *de plac. deb.* instead of *Transgressionis*.

The Clerk of the *Nisi prius* was fined forty Pound for this Mistake,

The Clerk who amended it without the Court's Order, was committed.

The Court may amend their own Judgments.

3 *Anne*, B. R.

The Judgment in Ejectment amended, and made agreeable with the Verdict.

Formerly where one Plaintiff died, the Action abated.

Where two several Persons join in one Declaration, and one of them dies pending the Suit before Judgment, the Declaration could not be amended by striking out of the dead Party; but the other Party that survived must have a new Writ; the Action being abated. (*Trin. 22 Car. 1. B. R.*) For the Death of one of the Plaintiffs did at the Common Law abate the Writ; and where the Writ is abated, the Declaration was there gone also. But now by the Statute

But this is remedied by 18 Car. 2. cap. 8. where either Plaintiff or Defendant died after Verdict.

“Death of neither Party, between the Verdict and the Judgment, shall not hereafter be assigned for Error, so as such Judgment be entred within two Terms after such Verdict.” Note, this Act was temporary, but made perpetual by 1 Jac. 2. cap. 17. And by another Statute made 8 & 9 W. Tertii, cap. 10. It is Enacted,

And by another Statute, 8 & 9 W. Tertii, cap. 10. that the Action shall not Abate by Death, but shall survive.

“That if there be two or more Plaintiffs or Defendants, and one or more of them die; if the Cause of Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

The Court will grant a *Certiorari* to certify Diminution.

Mistakes in Awarding Process on the Roll, amendable.

Stat. 8 H. 6. cap. 15. cannot be extended to Criminal Causes.

A Caption of an Indictment is amendable the same Term it comes in.

Nor to Actions, *Qui tam*.

The King may amend at the Common Law, where the Subject cannot.

The several Statutes of Amendment:

14 E. 3. cap. 6.
11 H. 4. cap. 3.
36 E. 3. cap. 15. 8 H. 6. cap. 15.

Discontinuance in a Criminal Cause is fatal, but not in a Civil Cause.

“That the Death of neither Party, between the Verdict and the Judgment, shall not hereafter be assigned for Error, so as such Judgment be entred within two Terms after such Verdict.” Note, this Act was temporary, but made perpetual by 1 Jac. 2. cap. 17. And by another Statute made 8 & 9 W. Tertii, cap. 10. It is Enacted,

“That if there be two or more Plaintiffs or Defendants, and one or more of them die; if the Cause of Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

“That if there be two or more Plaintiffs or Defendants, and one or more of them die; if the Cause of Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

“That if there be two or more Plaintiffs or Defendants, and one or more of them die; if the Cause of Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated. But such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs, against the surviving Defendant or Defendants.

In case of a Diminution, or a false Transcript, made and returned from an Inferior Court, this Court will grant a *Certiorari* to the Inferior Court, to certify the Truth of the Matter.

Mistakes in awarding of Process on the Roll, being the Act of the Court, are amendable. See *Blackmore's Case*, in the 8 Rep. 3 *Anne in B. R.*

The Statute of 8 H. 6. cap. 15. cannot be extended to Amendments in Criminal Causes. 3 *Anne*, *B. R.* 1 *Sid.* 233.

A Mistake in the Certificate of the Caption of an Indictment certified into *B. R.* may be amended the same Term it comes in, but not afterwards. 1 *Saund.* 249.

Declarations upon Penal Statute, *Qui tam*, &c. not amendable after Issue joined. 2 *Mod.* 144.

The King may amend at the Common Law, where the Subject cannot, as in a *Quare Impedit*, and an Original. 3 *Anne B. R.*

The first Statute of Amendment is 14 Ed. 3. cap. 6. 11 H. 4. cap. 3. *Vide* 36 Ed. 3. cap. 15. Another is 8 H. 6. cap. 15. And other Statutes since, which see in *Tit. Jeofails*.

If in a Criminal Cause a Man hath a Day given him by the Court, and doth not appear that Day, but the next, it is a Discontinuance; but in

Amendment.

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in a Civil Cause, it is helped by the Statute of 8 H. 6. cap. 15. 3 Anne, B. R.

A Declaration upon the Statute of *Winton* for a Robbery, was ordered to be amended after Issue joined, and the Jury brought to the Bar to try the Cause. 3 Lev. 347.

The *Teste* of the Original Writ is the very Substance of the Writ; for if it hath no *Teste*, it is not pleadable; and be it false *Latin*, or no *Latin*, it is not amendable. 1 Lev. 2.

The Mistake of a Clerk in the Crown Office in the Return of a *Mandamus*, ordered to be amended. *Show. Rep.* 273.

The Plaintiff may amend his Declaration, though it be seven Years past since he declared, if it be but in Paper. *Hill.* 23. Car. B. R. He paying Costs, or suffering the Defendant to imparl till the next Term after: For the Defendant is no more prejudiced thereby, notwithstanding the Antiquity of the Declaration, than if the Declaration were but of the Term next preceding.

A Declaration, grounded upon an Original Writ, cannot be amended if the Writ be erroneous; but if it be upon a *Latitat*, or Bill of *Middlesex*, it may be amended. *Pasch.* 24 Car. B. R. Because the Original Writ upon which it is grounded, if it be erroneous, is not amendable. But a Declaration in the King's-Bench, is not grounded on the *Latitat*, or Bill of *Middlesex*, these Writs being only to bring the Defendant into Court, and the Plaintiff is at large to declare as he pleaseth.

The Court will not suffer the Plaintiff, in an Action upon a Prohibition, to amend and vary his Declaration from his Suggestion delivered into the Clerk of the Papers. *Mich.* 1 Anne, B. R. *Sparrow* and *Allen*.

When a Transcript of a Record is removed out of the Common Pleas Court, and is to be amended here; the Clerk in the Common Pleas is, by Rule of Court, to bring in the Original Record out of the Common Pleas into this Court, that the Transcript may be here amended in open Court by the Record it self. *Trin.* 24 Car. 1. B. R. For every Court will only trust their own Officers with the Records of their Court, who are accountable to them for their Actions, and are punishable by them for their Misdemeanors; and with such Persons, Records are only to be trusted.

So also they will, upon the Return of a *Certiorari*, amend a Transcript out of an Inferior Court, by a Record remaining in that Court, if there be a Record to warrant it. *Mich.* 1 Anne B. R.

8 H. 6. cap. 15.

Amendment of a Declaration upon the Statute of *Winton*, upon the Day of Trial.

The *Teste* of an Original is not amendable.

Return of a *Mandamus* amended.

The Plaintiff may amend his Declaration, if in Paper only, upon Payment of Costs.

A Declaration upon an Original cannot be amended, but upon a *Latitat* it may.

The Court will not suffer the Plaintiff, in an Action on a Prohibition, to vary from his Suggestion.

How a Transcript out of a Record in the Common Pleas, is to be amended in this Court.

How a Transcript out of an Inferior Court may be amended.

The Clerk of the Assizes may amend a *Postea* by his Notes.

be said to be but *Vitium Scriptoris*, and not the Errors of the Parties. See *Cro. Car.* 358.

A Demurrer in Paper may be amended.

Parties concerned.

Where a *Postea* may be amended.

Trin. 24 *Car.* 1. *R.* For such Amendment would be mischievous; and the Law takes

The Statutes of *Jeofails* extend to inferior Courts; and the Statute for the Amendment of the Law. 4 & 5 *Annæ*, cap.

A Writ of Error returned cannot be amended.

A Writ of Error was to return a Record in Trespass upon the Case; and the Action was Trespass only; not good.

Where there shall not be any Amendment of another Term.

Clerks, or by the 11 *H.* 4. cap. 3.

A Warrant of Attorney amended; and why.

A Mistake of a Sum in the Issue, not amendable, after Error brought.

A Mistake in a Judgment of Robert for Henry ordered to be amended.

be but a Misprision of the Clerk, and ordered it to be amended. *Cro. Car.* 594. pl. 8.

The Clerk of the Assizes may amend the *Postea* by his Notes, if it be mistaken, after that he hath returned it into this Court. For such Faults shall

After the Parties have joined in Demurrer, the Demurrer may be amended, if it be but in Paper, by the Leave of the Court, or the Consent of the

A *Postea* may be amended by the Record, in such Things, whereby the Amendment may not bring the Jury within the Compass of an Attaint.

R. For such Amendment would be mischievous; and the Law takes Care to prevent Mischiefs.

The Statutes of *Jeofails* are now adjudged to extend to Inferior Courts, as hath been lately adjudged between *Walwyn* and *Smith*, and *Phyler* and *Boson*. And also now by the Statute for the Amendment of the Law. 4 & 5 *Annæ*, cap.

A Writ of Error returned and filed, cannot be amended: Because that would be an Alteration of a Record, which the Law will not admit.

A Writ of Error was to return the Record and Proceedings, *De quadam Transgressione super Casum*: And the Action was in Trespass only. This Writ, being an Original Writ, cannot be amended. 3 *Annæ* B. R.

The Record and Process of Real and Personal Actions, &c. whereof Judgment is given and inrolled, or Things touching such Plea, shall not be amended or impaired by the new Entering of Record or Thing certified in any Term after such Judgment given and enrolled. 11 *H.* 4. cap. 3.

A Warrant of Attorney was amended after Judgment, by adding *Executor testamenti*, &c. there being no other Suit between them, *Cro. Jac.* 135. pl. 9.

The Condition of a Bond was to pay 50 *l.* at such a Day; the Defendant pleads, that he paid the 20 *l.* at the Day; and so mistakes and puts 20 for 50: The Plaintiff replies, and says, That he did not pay the 20 *l.* and found for the Plaintiff: And upon Error brought, it was adjudg'd, That it was not amendable, neither could there be any Repleader; and so the Judgment was revers'd. *Cro. Car.* 593. pl. 7.

A Mistake was in a Judgment, *quod* Thomas *recuperet* against the said Henry his Debt and Damages, and the said Robert in *miser cordia*, whereas it should have been Henry. But the Court held it to

Amendment.

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The Word *Vicecomes* was omitted in a *Venire Facias*; but after Error brought it was ordered to be amended. *Cro. Car.* 595. *pl.* 12.

Vicecomes omitted out of a *Venire Facias* order'd to be amended.

For farther Satisfaction concerning this Head of Amendment of Declarations, &c. see *Compleat Attorney and Solicitor*, and see after, Title Declaration.

And for other Amendments by the Statutes of Amendments and Jeofails, see *Danv. Gen. Abr.* Title Amendment.

Amends.

Amends, See { *Bailiff.*
Damage Feasant.
Tender.

A Amends is a Satisfaction given for an Injury done.

Amends, what.

The Defendant avows for Damage Feasant in his Freehold: The Plaintiff says, That after the taking and before the Delivery he tender'd to the Servant who took them 2 s. which was sufficient Amends. Upon a Demurrer adjudged,

Avowry for Damage Feasant.

Tender of Amends after impounding.

1. That the Tender came too late, being after the impounding; but for this see the Cases cited in this case.

The Tender came too late.

2. That the Tender to the Servant was not sufficient, his Master being present; but if he had not been there, they somewhat doubted.

The Tender was to a Servant.

3. That the Averment, that 2 s. was sufficient Amends, though without shewing to the Court what the Damages were, was sufficient. *Cro. Eliz.* 813. *pl.* 1.

Averment, that the Damages tender'd were sufficient.

Amercement.

See Fine.

Amercement, what.

Amercement is called in Latin *Misericordia* for that it ought to be assessed mercifully; and this ought to be moderated by Affection of his Equals.

Where Defendant for pleading a false Deed, and denying the true one, shall be fined; where only amerced.

Where Plaintiff or Defendant shall be amerced, where not.

A Default or Offence must precede an Amercement.

Amercement of Plaintiff and Defendant seldom levied.

Court-Leet can amerce for publick Nuisances only.

Sheriff shall be amerced, if he returns, that he cannot do Execution.

he must acquaint the King and Council, and yet the Sheriff shall be amerced, if he return that he cannot do Execution.

Dubitatur, Whether the Court can mitigate a Fine in any Term after it is assess'd.

Sheriff fined for Return of a *Rescous* on Execution: But on Indictment of Rescues, the Court will bring in the Rescuors.

Where the Defendant for pleading a false Deed, or where for denying of a true Deed, shall be fined, or where only amerced. 2 *Saund.* 191, 192, &c.

Where the Plaintiff or Defendant shall be amerced, and where not. *Id.* 226, 227.

That there ought to be a Default or Offence, precedent to an Amercement. *Id.* 227.

And That an Amercement of the Plaintiff or Defendant is rarely or never levied. *Ibid.*

That a Court-Leet can only amerce for publick Nuisances, and not for particular Trespasses or Damage to the Lord, or any other. 1 *Saund.* 135, 136.

It's said, a Sheriff who cannot do Execution by a *Posse Comitatus*, ought to acquaint the Deputy-Lieutenants of the County, and if they assist not, he must acquaint the King and Council, and yet the Sheriff shall be amerced, if he return that he cannot do Execution. 1 *Keb.* 99. pl. 91.

The Court doubted whether they could mitigate a Fine, in any Term after it is assess'd; yet they meet only once in two Terms to mitigate: And the Clerks conceived they could not. 1 *Keb.* 277. pl. 68.

On Return of a Rescues on Execution the Court fined the Sheriff 100 l. and held it void. But upon Indictment of Rescues, the Court will bring in the Rescuors; but will do nothing on the Execution, but on mean Process it's good. 2 *Keb.* 571. pl. 80.

The Clerk of the Peace is amerceable by the Court of the King's Bench, for gross Faults in Indictments drawn up by him, and removed thither; and it hath often been so done. (21 Car. 1. B. R.) For such Faults shall be intended to be Faults committed out of Negligence, and not out of Ignorance.

If upon a *Latitat* taken out of this Court, the Sheriff doth return a *Cepi corpus*, and the Party arrested upon this Process, doth not appear at the Day of the Return, the Sheriff may be amerced by the Court; yet if the Sheriff be amerced, and the Party arrested do appear within a Week after the Day he ought to have appeared, the Amercement may by the course of the Court be taken off of the Sheriff. (Hill. 22 Car. 1. B. R.) For a Week's time is but a small matter, and the Party cannot be prejudiced by this small Delay, and *de minimis non curat Lex*.

So likewise if the Party appears at any time before the Amercement is estreated, the Court will discharge the Amercements upon Payment of Costs.

The Sheriff is to be amerced for the Faults of his own Bailiffs, for the Sheriff is the Officer to the Court, and not they. Hill. 22 Car. 1. B. R.

If the Sheriff be amerced by the Court for the not doing a thing belonging to his Office, and yet he continues to neglect to do it, contrary to the Rule of this Court, the Court may increase the Amercements upon him, until he perform his Duty therein. (Trin. 23 Car. 1. B. R.) For the greater the Offence is; the greater the Punishment ought to be.

Amercements set upon the Sheriff, upon the Motion of the Party, if they be not estreated into the Exchequer, may be with a *respectuatur*, that is, be respited, if the Party grieved, who caused him to be amerced, will consent thereunto; otherwise it cannot be. (Trin. 23 Car. 1. B. R.) For though the Amercements be due to the King, yet they were set upon the Sheriff for an Injury done to the Party.

The Sheriff of York was amerced in this Court for not returning a Writ of *Habeas Corpus cum causa*, though he was commanded not to do it by the Bishop then President there. 14 Ed. 3. Crompt. Jurisd. p. 78.

A Sheriff, nor any other Person out of his Office, cannot be amerced by the Court, for then he is not an Officer to the Court; but a *Distringas* must issue out against him, (Mich. 23 Car. 1. B. R.) to distrein him, and make him come in; for he is not now accounted present in Court, as when he was Sheriff, or other Officer.

Clerk of the Peace amerced by B. R. for gross Faults in Indictments drawn up by him.

Sheriff who on a *Latitat* taken out of B. R. return'd a *Cepi corpus*, may be amerced, if the Party arrested do not appear: But if he appear within a Week, the Amercement is of course taken off.

So also paying Costs, if the Party appear at any Time before the Amercement is estreated.

Sheriff may be amerced for the Faults of his Bailiffs.

If a Sheriff be amerced for omitting the Duty of his Office, and he continues to neglect it, the Court may increase the Amercements till he performs it.

Amercements on the Sheriff, if not estreated, may with Consent of the Party who caused him to be amerced, be respited; otherwise not.

Sheriff amerced for not returning a *Habeas Corpus cum causa*, though commanded not to do it.

None but Officers of the Court can be amerced; but a *Distringas* must be issued out against them.

An Amercement grounded on Presentment only voidable, is good; but if on a Presentment absolutely void, it is void also.

There is a Difference between a Thing that is void, and a Thing voidable; that which is but voidable, is good in Law till it be legally made void, but a Thing void, is void *ab initio*.

Sheriff amerced for a special Retorn, since Stat. 23. H. 6.

Bailiff of Westminster for returning a Bill of Middlesex with a Superfedeas out of Chancery, it being with a *Ac etiam*; the Court held the Retorn void, and gave him but four Days to make his Retorn on pain of 100 l.

An Amercement which is grounded upon a Presentment, which Presentment is only voidable by reason of some Fault in it, is a good Amercement; but if it be grounded upon a Presentment which is absolutely void, the Amercement is also void. (*Mich. 24 Car. 1. B. R.*) For there is Difference

between a Thing that is void, and a Thing voidable; that which is but voidable, is good in Law till it be legally made void, but a Thing void, is void *ab initio*. It was said by *Twisden* in the Case of *Franklin and Amos*, that he had known the Sheriff amerced for a special Retorn since the Statute of 23 H. 6. which alters not the Retorn, but ordereth Security to be taken by the Sheriff; and because the Plaintiff, Bailiff of Westminster, had retorn'd a Bill of Middlesex with a Superfedeas out of Chancery, because it was with an *Ac etiam*; the Court conceived the Retorn void, and gave him only four Days to retorn his Writ in pain of 100 l. and would not suffer him to buy a new Writ. 2 Keb. 112. pl. 52.

See *Danv. Gen. Abr.* Title Amercement.

1. For what Things an Amercement shall be.
2. What Person may be amerced.
3. In what Cases it shall be affected.
4. By whom and in what Actions, and for what Causes, &c.

The Cause of an Amercement in a Plea, real, personal or mixt (where the King is to have the Fine) is, for that the Tenant or Defendant ought to render the Thing demanded by the King's Writ the first Day, which if he doth, he shall not be amerced; so that the Tenant or Defendant shall be amerced for Delay. *Co. Lit. 116. b.*

Amercements, in what other Cases.

An Amercement is a Penalty assessed by the Equals of the Party amerced for an Offence done; as for want of Suit of Court, or for not amending of something which was appointed to be done by a certain Time before, or in such like Cases. And in these Cases the Offender puts himself in the Mercy of the King, or of his Lord. See *Terms of the Law 41.*

By whom Fines are set.

There is a Difference between Fines and Amercements; for Fines are always imposed and assessed by the Court; but an Amercement by the Country. 8 Co. 39.

And by whom Amercements.

No Court can impose a Fine, but a Court of Record. 8 Rep. 41. a. A County or Hundred Court can only amerce, but not fine. *Ibid.*

What Courts can fine,

And what amerce only.

What is a good Amercement in a Leet, and how to be affected.

Amercement in a Court-Leet, without saying to what Sum, is naught: Also that it was affected by all the Jury to 40 s. is naught: Because it ought to be by Affeerors elected by the Steward. 8 Rep. 40. b. and not by the Jury, and they to have an Oath administer'd to them for that Purpose. *Lev. 206, 207. Hob. 129.* and it ought to be affected mercifully, 8 Rep. 39 a. 59. b. *Co. Lit. 126. b.* A Man shall not be amerced in a Leet

Leet for a Trespass to the Lord; for he shall not be his own Judge; but he may be amerced for Nonpayment of *Certum Letum* to the Lord, he being a Deciner. *Raym.* 160. 2 *Keb.* 139. 1 *Leon.* 242.

For an Amercement in a Court-Baron, the Lord cannot distrein without a Prescription: But for a Fine, and all Amercements in a Leet, a Distress is incident of common Right. 11 *Rep.* 45. a. b. *Cro. El.* 748. pl. 1. but Debt lies for it. *Cro. Jac.* 582. pl. 2.

No Distress for an Amercement in a Court-Baron: But in a Court-Leet it is of common Right.

It was moved that the Steward could not amerce in a Court-Baron, but the Suitors must amerce.

Stewards may assess Amercements in a Court-Baron.

Curia. It is the common Course that Amercements are assessed by the Stewards. *Cro. El.* 748. pl. See *Cro. Jac.* 582. pl. 2. And also in Title Court-Baron. See *Noy* 20.

An Amercement ought to be *secundum quantitatem delicti*, and if it be otherwise a Writ *De moderata misericordia* lies. *Noy* 20.

What Remedy for an unreasonable Amercement.

Fines imposed by any Court of Record are not to be assessed. 8 *Rep.* 39. a. b. 2 *Inst.* 27.

What Fines are not to be assessed.

If a Jury in a Leet tax an Amercement, this is sufficient without any other Assessment; for the Assessment is the Act of the Jury, and the Amercement is the Act of the Court. 8 *Rep.* 40. b. 2 *Rol. Abr.* 542. Pl. 5. *Cro. Car.* 275. See 1 *Leon. Case* 327, for an Amercement.

Where an Amercement need not be assessed.

It was said to be the constant Course throughout the Realm, for Stewards (even in Court-Barons, where the Suitors are Judges) to assess the Amercements. *Cro. El.* 748. But they ought to be assessed by the Homagers or Assessors. 2 *Rep.* 3. 4. But no Amercement can be assessed at a Leet for not appearing, without a Presentment that the Offender owes Suit and Service to the Leet. *Cro. El.* 241.

How Amercements ought to be assessed and assessed.

An Infant, being Plaintiff or Demandant, shall not be amerced, because he shall not find Pledges. *Co. Litt.* 227. a. 8 *Rep.* 61. And therefore the Entry is, *Ideo in Misericordia sed pardonatur quia Infans.* 8 *Rep.* 61. b. N^o. 9.

be assessed by the

In Court Barons.

In Court Leets.

An Infant shall not be amerced, and why.

How the Entry of the Pardon to be.

In Case for Words against Baron and Feme, for Words spoken by the Feme, and Judgment is given against both; as well the Baron as the Feme shall be amerced. *Hob.* 170.

Where both Baron and Feme shall be amerced.

If in the Day-time a Murder be committed in a Town not walled, and the Murderers escape, the Township shall be amerced. 3 *Inst.* 53. But if it be walled, whether it be in the Night or Day, the Town shall be amerced. *Ibid.*

Where a Township shall be amerced.

If at a Court-Leet twelve chief Pledges are sworn to enquire of the Articles of the Leet, and refuse to present, that they ought to pay 10 s. *pro Certo Leto*: The Steward must fine them severally, nor jointly, for the Refusal of one, is not the Refusal of another. *Co.* 11. *Rep.* 42.

The Jury, who must be here themselves, must be fined severally, and why.

Ancient Demesne.

Ancient Demesne, See **Abatement.**
Pleas.

Ancient Demesne,
Quid

Ancient Demesne, are those Manors that were in the Hands of King Edward the Confessor, and which he caused to be written down in a Book called Domesday, the Tenants of which Lands shall not be impleaded out of those Manors; and if they are, they may plead the Matter in Abatement: But if they answer to the Writ, and Judgment be given, then the Lands become Frank-fee for ever.

What Statutes extend
to it.

Regularly all General Statutes extend to *Ancient Demesne.* 4 *Inst.* 270.

It is a good Plea in
Ejectment, Replevin, &c.

Ancient Demesne is a good Plea in Ejectment, 5 *Rep.* 105. *a.* In all Real Actions, Actions of Account and Replevin, not in Actions meerly Personal; as Trespass *quare Clausum fregit*, &c. Because they cannot hold Plea *contra Pacem*; but if in pleading the Freehold comes in Question, it's a good Plea. 46. *E.* 3.

Nor in Actions meerly
Personal.

1. *Br. Ann. Demesne* 20. 4 *Inst.* 270. *Hob.* 47. *Cro. El.* 826. pl. 29.

It may be pleaded after
Imparlance, and why.

It is pleadable after Imparlance; for if Judgment be given here, the Lord may reverse it by Writ of Disceit, and the Judgment shall be avoided. *Latch* 83, 84.

Latch 83, 84.

Pleaded without De-
fence, and good.

Ancient Demesne pleaded in Ejectment without *Venit & defendit Vim & Injuriam*, and good. *Show. Rep.* 386. It must not be after Imparlance.

How the pleading of
Ancient Demesne to be.

An Exception was taken to the Pleading *de Antiquo Dominico Domine Regine Anglie*, whereas it ought to have been *de antiquo Dominico Domine Regine Corona sue Anglie*: But held good both Ways. 3 *Leon. Case* 166.

Ancient Demesne plead-
ed.

Ancient Demesne of such a Manor pleaded in Ejectment. The Plaintiff replies, That the Tenements are pleadable at the Common Law, *Absque hoc* that they are *Parcel. de Antiquo Dominico Domini Regis Anglie*; and upon a Demurrer, the Defendant had Judgment, for that the Traverse was ill; for he ought to

Replication, and an ill
Traverse.

Ancient Demesne.

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to have travers'd that the Manor was *Ancient Demesne*, and that shall be tried by *Domesday-Book*; or else to have travers'd, that those Tenements were held of that Manor. *Show. Rep.* 271.

How it ought to be traversed.

The Privilege of *Ancient Demesne* to be discharged of Toll, doth not extend to him that is a Merchant, or that trades and gets his Living by Buying and Selling; but the Privilege was annex'd to the Person in Respect of the Land, viz. Because they manure the Demesnes, and provide Corn for the King's Garrisons; and the Privilege is for those Things which arise, or are to be used in the Land, or for his Family that manures the Land. *Cro. El.* 227. 1 *Leon.* 231, 233. 2 *Inst.* 221. 1 *Leon.* 233. 2 *Leon.* Case 240

To whom the Privilege extends.

Tenant in Fee of *Ancient Demesne*, shall have the Privilege of it. *Fitz. Tell.* 8. So also shall Tenant at Will. 2 *Leon.* 191.

Who shall have it.

Ancient Demesne Lands may be extended upon a Statute-Merchant, Staple, or *Elegit*: Because the Title of the Land is not directly put in Plea in the King's Courts. *Hob.* 47. 4 *Inst.* 470. *Moor* 211. *Pl.* 351.

Those Lands may be extended.

Lessee for Years shall not plead *Ancient Demesne*; nor the Lord, in an Action against him, cannot plead it: Because it is Frank-fee in his Hands.

Who may plead it.

In Replevin, the Defendant may in Banco plead, that the *Locus in quo* is *Ancient Demesne*. 30 *E.* 3. 126.

41 *E.* 3. 22.

A Fine levied in the King's Courts makes it Frank-fee, until reversed by a Writ of Disceit.

Pleaded in Replevin

F. N. B. 13 C. So a Recovery in an Assize. 11 *H.* 4. 86. a. b. So where the Lands come to the King, this makes it Frank-fee: So also if the King leases it for Life, or grants it over in Fee. 17 *E.* 3. 57. 21 *Aff.* *Pl.* 13.

What makes those Lands Frank-fee.

Upon a Fine levied in the Common Pleas, the Lord (not being Party to the Record) cannot have a *Sci. fa.* but must bring a Writ of Disceit. 3 *Lev.* 419. But if the Fine be of Part *Ancient Demesne*, and Part at Common Law, it shall be annulled for the *Ancient Demesne*, and stand for the other. *F. N. B.* 98. P.

Who may reverse a Fine of it, and how.

If a Fine be reversed by Writ of Disceit, the Conusor shall have it again; because the Fine was void as being *coram non Judice*. 4 *Inst.* 270. 10 *Co.* 50. a. But if after the Fine levied, the Conusor had released to the Conusee and his Heirs, or confirmed his Estate, he should have returned the Land, notwithstanding the Fine had been destroyed: Because by the Release or Confirmation, his Estate was made good. *F. N. B.* 98. A. 10 *Co.* 50. a.

How it shall be where Part is *Ancient Demesne*, and Part at common Law.

What shall become of the Land upon Reversal of the Fine.

How to be prevented.

Annuity.

Annuity.

Annuity, See Grant.

An Annuity, what.

the Person of the

Who shall have the Writ.

Against whom it lies.

he hath Assets) unless the Grant be for him and his heirs. Co. Lit. 144. b.

Lies not for a Rent reserved.

If a Man makes a Feoffment in Fee, reserving a Rent, no Writ of Annuity lies for this: Because the Reservation are the Words of the Feoffor, and no Grant of the Feoffee. Co. Lit. 144.

Where a Writ of Annuity lies after the Determination of the Estate, out of which the Rent was granted.

A Rent-Charge was granted out of a Lease for Years, the Lease determin'd, the Grantee brought a Writ of Annuity, and adjudged that it lies. Moor. Case 450.

Debt lies for an Annuity for Years.

Debt for an Annuity of 5*l.* per Annum granted for two Years payable at Michaelmas and Lady-day; It was objected that only a Writ of Annuity lies.

Curia. Debt lies, being a Grant for Years; for it is by the Deed as a Contract. Cro. El. 268. pl. 4.

A Counsellor who hath but a small Annuity, is not bound to set his Hand to a Bill, but only to give his Advice.

Where a small Annuity of 40 *s.* per Annum pro Consilio impendendo: Adjudged that a Counsellor who hath such a Fee, is not bound to put his Hand to every Bill, but is only to give his Counsel. Cro. Jac. 482. pl. 16, 483.

How the Grantee may declare upon an Annuity for Life.

A Man counts upon a Grant of an Annuity to himself for his Life; Virtute cujus he was seized in Dominico suo ut de libero tenemento; and moved that this Rent granted for Life, Virtute cujus, &c. is not an Annuity but a Rent-Charge, Curia contra. It is an Annuity. Cro. Car. 171.

The Grantee may make it either Personal or Real.

The Grantee hath an Election to bring a Writ of Annuity, and make it Personal, (if issuing out of Land) or an Assize, Distrain, &c. and make it Real. Co. Litt. 144. b.

Annuity.

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Tho' the Grantee distrain for the Rent, yet he may afterwards bring a Writ of Annuity, and discharge the Land; for the Grantee's Election must be determined by some Action or Suit in some Court of Record: But if the Grantee avow the taking, this is in the Nature of an Action, and a Determination of his Election before any Judgment given. *Co. Lit.*

145. a. b.

If a Man recovers in a Writ of Annuity, he shall never have a new Writ of Annuity for the Arrears due after the Recovery, but a *Scire Facias* upon the Judgment, because the Judgment is always executory. *2 Rep.*

37. a. *Co. Lit.* 145.

What determines the Grantee's Election.

A *Scire Facias* only to recover Arrears due after a Judgment.

Appeal.

App^l is where one hath done a Robbery or Murder, or Whorem; then the Wife or Heir of him that is murdered, or the Party robbed or maimed, shall have an Appeal against the Parties and their Accessories, who have committed those Crimes.

In a Writ of Appeal all the Pleadings are entred in *Latin*, but the Counsel ought to count in *French*, as in real Actions. *Mich.* 22. *Car.* 1. *B. R.*

The Defect in any Process in an Appeal, or the Non-appearance of the Plaintiff, doth discontinue the Appeal, and makes an End of the Action, as well as a Defect in the Original Writ. *Hill.* 22. *Car.* 1. *B. R.*

This is in favour of Life, of which the Law is

By the Statute of 3 *H.* 7. *cap.* 1. It is Enacted, That Manslayers, Murderers and all other Abettors and Accessories to the same, be indicted, arraigned and tried of the same Felony or Murder at the King's Suit, at any Time within a Year after the Crime committed, and not to tarry a Year and a Day for any Appeal to be brought for

That if any Principal or Accessory be acquitted of Felony or Murder at any time at the King's Suit, within the Year and Day, the Court before whom he is acquitted shall not discharge him, but remit him to Prison, or bail him till the Year and Day be passed, to the Intent that the Wife, or the next Heir to the Person slain, may within the Year and Day bring their Appeal, if the Benefit of the Clergy be not first had; and

Appeal, what.

The Pleadings are in *Latin*, but Counsel must plead in *French*.

Defect in the Process, or in the Original Writ, is a Discontinuance, and so is Non appearance of the Plaintiff.

tender.

Murderers may be tried at the King's Suit at any time within the Year and Day, and not tarry for an Appeal.

3 *H.* 7. *cap.* 1.

the same.

Where a Principal or Accessory is acquitted, he must be remitted to Prison for a Year and Day, to expect an Appeal if he hath not had his Clergy.

the

the Appellant shall have like Advantage, as if such Acquittal and Attainder had not been.

Within what time the Wife or Heir may bring their Appeal; and where.

And may make an Attorney.

after they be commenced to the End of the Suit.

Where one Process is returned another must immediately follow.

All Trials for Murther by Appeal, &c. must be in the proper County.

The Son brings an Appeal of the Death of his Father against two Persons;

One is found guilty, the other not:

Moved that there is no Declaration upon the File.

Curia. It's good without it. And why.

pleaded *instante*, or had pleaded any other Plea then not guilty, so as there had been an Adjournment to another Term, then the Declaration ought to have been filed, *Cro. Car. 531. pl. 10.*

Process shall be in Foreign Counties, against Persons appealed or indicted. 8 H. 6. cap. 10.

Process in Appeal is void where there is no such Place in the County. 18 H. 6. cap. 12.

An Infant may have it.

A Woman shall have it but only for an Husband.

Magna Charta c. 34.

Appeal of Robbery

Who shall have it.

That the Wife, or Heir of the Person murdered, may bring their Appeal at any time within the Year and Day after the Murther committed, before the Sheriff and Coroners of the County where the Fact was committed, or in the Court of King's Bench, or before Justices of Gaol-Delivery; and the Appellant in an Appeal of Death where Battail lieth not, may make an Attorney, and appear in the same

When a Process is returned in an Appeal, there ought another instantly to issue out, and no Day betwixt; for then it is a Cessation of the Prosecution, and absolutely discontinued. *Cro. Jac. 284.*

It is against a Fundamental Rule in Law that a Trial for Murther, by Appeal or otherwise, should be out of the County where it is committed. *Cro. Car. 247. pl. 8.*

An Appeal of Death was brought by the Son and Heir for the Death of his Father, against two; one of them was found guilty, and the other not guilty; and moved that there was no Declaration upon the File in *Michaelmas* Term, when the Trial was; but it was answered, that this Appeal was arraigned at the Bar in *Trinity* Term, and the Defendants there pleaded not guilty, and no other Declaration is to be filed: But if they had not

Process shall be awarded against those which dwell in Foreign Counties, who are appealed or indicted.

Where an Appeal is laid to be where no such Place is in the same County, the Process shall be void

An Infant may bring an Appeal. *Moor 466. By Guardian. Litch 172.*

A Woman cannot now bring an Appeal for the Death of any Body, but only her Husband: But if she marries before, or pending the Appeal, the Appeal is gone for ever. *Ca. Litt. 25 b. But an*

None but the Heir at Law shall have an Appeal for the Death of his Ancestor; for though an Heir Female can have no Appeal herself, yet she shall prevent the Heir Male from having it. *Staundf. 59.*

In an Appeal of Burglary, it was *Burgaliter fregit* instead of *Burglariter fregit*; and therefore held naught. 4 Rep. 39. b.

In an Appeal, the Count ought to be *in Propria Persona*, and not by Attorney. 3 Jac. 2. B. R.

Battel shall not be waged where the Defendant hath been indicted; and if the Defendant will offer it, it is a good Counterplea of Battel. *Armstrong's Case*, 8 W. B. R.

In an Appeal of Murder, the Plaintiff counts that the Defendant gave the Deceased a mortal Blow at *W.* of which Blow the same Day he died at *S.* *Et sic* the Defendant killed him at *W.* And held repugnant; for it cannot be said that he murdered him where the Blow was given, but where he died. 4 Rep. 42. b.

In an Appeal of Murder upon Not guilty, the Defendant was found guilty of Manslaughter, and had his Clergy: And was afterwards indicted of Murder, and pleads the Conviction in the Appeal; and held a good Bar. 4 Rep. 40. a. See *postea*.

In Appeal of Maihem the Defendant pleads to the Writ, and also pleads over to the Maihem; here he hath lost the Benefit of his Plea to the Writ, for he ought not to plead over, but where his Life is in Jeopardy. *Moor, Case* 628.

If the Appellant declares the Deed, the Year, the Day, the Hour, the Time of the King, the Town where the Deed was done, and with what Weapon slain, the Appeal shall stand good, and shall not be abated for want of fresh Suit, if the Party sues within * a Year and a Day after the Deed done.

Note, Besides these Circumstances in the Act it must be mention'd,

1. In what Part of the Body the Wound was.
2. Of what Length and Depth; but if the Arm was cut off, or the like, there the thing appears.
3. That the Party wounded died of the Wound.
4. That he died of it within a Year and a Day after the Wound given. 2 Inst. 318. See the Book, where are good Directions in all other Cases.

If in an Appeal of Murder the Defendant pleads in Abatement of the Writ *, it is safe for him to plead also Not guilty; for if the Writ be adjudged good, it is peremptory, and he shall not be permitted to answer over, but shall be condemned upon the Writ. *Showers's Rep.* 47. 3 H. 7. cap. 1.

Of Appeals by Writ or Bill & *Accusatio* by an Approver, and also of the several Manners of Attainders of Felony. 9 Rep. 119. a.

Burgaliter for *Burglariter*, is naught.

Count must be *in Propria Persona*.

Where Battel shall not be waged.

How the Count to be in an Appeal of Murder.

Defendant found guilty of Manslaughter, in an Appeal of Murder.

A good Plea to an Indictment of Murder.

How to plead in Abatement in an Appeal of Maihem.

How to declare in an Appeal of Murder. 6 C. 1. cap. 9.

* The Year and Day must be accounted according to the Kalendar, not 28 Days to a Month. 2 Inst. 320.

How the Wound and Killing is to be set forth.

How to plead safely in Abatement.

* *Note*, The Plea must be *in Propria Persona*, not *per Attornatum*. *Showers's Rep.* 47.

What is a good Plea in an Appeal of Maihem.

recovery only Damages, he shall not be twice satisfied for one and the same Thing. 4 Rep. 43. a.

How it is in Case of an insufficient Indictment.

The Plaintiff ought to bring but one Writ against all Parties concerned in the Murder.

Appeal against Principal and Accessories, the Principal is convicted of Manslaughter.

Malice prepenfed.

Principal was convicted by Verdict, yet because he had his Clergy before Judgment, so that it doth not appear judicially, viz. by Judgment of the Law, that he was a Principal, both the Accessories, as well before as after, were discharged. 4 Rep. 43. See Title Indictment.

How an Appeal to be brought by a Widow, and how by an Heir.

Stat. 3. H. 7. cap. 1.

power her to sue by Attorney: But when by an Heir, it must be in *Propria Persona*, if of full Age; but if not, he must be admitted by the Court to sue *per Custodem* or *Guardianum*: And then the Guardian must appear in Court. *W. B. R.*

A Nonsuit after Appearance is conclusive; but before not.

Appeal by Guardian, Sickness shall not excuse the Guardian's Appearance in Court at the Day.

Nonsuit as to one Defendant and one Issue, is a Nonsuit as to all.

A Recovery in an Action of Trespass and Assault, is a good Bar to an Appeal of Maihem; for in all Cases where the Plaintiff for a Tort or Injury is to

Where an Indictment, whereupon a Man is convicted, is insufficient; yet the Party may be again indicted, and arraigned or appealed for the same Offence. 4 Rep. 47. a.

A Woman brought seven several Appeals for the Death of her Husband, against several Persons as Principals; and resolved that all the Appeals but one should abate: Because all the Principals and Accessories before the Murder, and all the Principals and Accessories after the Murder, and before the Writ purchased, against whom the Plaintiff will bring the Appeal, ought to be named in one Writ, and not in several Writs. 4 Rep. 47. b.

Appeal against A. as Principal, and B. as Accessory before the Murder, and D. as Accessory after it; the Principal is found guilty of Manslaughter, and had his Clergy; B. was discharged, because it was upon a sudden Debate or Affray: But if it be premeditated, it is Murder. Also, although the Principal

was convicted by Verdict, yet because he had his Clergy before Judgment, so that it doth not appear judicially, viz. by Judgment of the Law, that he was a Principal, both the Accessories, as well before as after, were discharged. 4 Rep. 43. See Title Indictment.

In an Appeal the Appellant ought to appear in Court in Person; yet upon a Motion to the Court, the Court may admit him to prosecute his Suit by his Attorney. For there may be Reasons of his Absence: But in case of Appeal by a Widow *de morte Viri*, the Statute of 3 Hen. 7. cap. 1. doth im-

power her to sue by Attorney: But when by an Heir, it must be in *Propria Persona*, if of full Age; but if not, he must be admitted by the Court to sue *per Custodem* or *Guardianum*: And then the Guardian must appear in Court. *W. B. R.*

A Nonsuit in an Appeal after Appearance is conclusive; but before an Appearance it is not. *Hill. 7 W. Regis B. R.* See *Cro. Eliz.* 605. pl. 1.

An Infant brought an Appeal by Guardian, and it was prayed at the Day in Court, That the Guardian being sick, might not be demanded; but might have a Day over. *Per Cur.* It can't be in an Appeal. *Latch. 173.*

An Appeal of Death of the Husband against two Defendants, upon several Issues joined, the Plaintiff was nonsuited as to one of them upon a Trial; this is a Nonsuit as to all of them. *Cro. El.* 460. pl. 1.

An Appeal of Murder was tried in London, and the Jury found him Not guilty of the Murder, but guilty of Homicide; which they might do, or else have found him Not guilty generally: And this is a good Conviction for the Homicide, though the Appeal was for Murder only.

Note, This was afterwards pardoned. *Cro. El.* 464. pl. 13. See Title Pardon.

The Sheriff ought to deliver the Writ of Appeal into the Court at the Return thereof. And the Delivery of a Writ of Appeal by the Sheriff to an Infant, who was Plaintiff in the Appeal, and had before that Time chose a Guardian, was held to be a great Misdemeanor.

If one be indicted of Murder, and convicted of Manslaughter, and the Court will not call him to Judgment, but continue him over to another Goal-Delivery, with a *Curia advisare vult*; if an Appeal of Murder be brought, he may plead his Conviction, and his being Clerk, ready to read, if the Court would have allowed him. *Kelynge's Rep.* 107.

When the Indictment and Conviction of Manslaughter and Appeal are removed into the King's Bench, that Court is bound to call the Party to Judgment, and to allow him his Clergy if he prays it, and order him to be burnt in the Hand. *Ibid.*

Neither a general Pardon, nor the King's Pardon, can pardon the burning in the Hand in an Appeal. 782.

When at the same Assizes there is an Indictment and Appeal depending, the Appeal shall be proceeded upon, if desired, by the Prosecutor; because the Statute of 3 H. 7. cap. 1. doth not forbid it; and if the Appellant be ready, he shall have the Preference. Yet if the Court try him upon the Indictment, before he be tried upon the Appeal, and he be convicted of Manslaughter, and hath his Clergy, it is a good Bar to the Appeal. *Kelynge's Rep.* 107.

Where upon an Indictment of Murder there is a Conviction of Manslaughter, and at the same Gaol-Delivery the Wife or Heir put in an Appeal, it is just for the Court to call the convicted Person to Judgment upon the Indictment, and to allow him his Clergy, before he be put to answer the Appeal; and then he may plead the Conviction and Clergy in Bar of the Appeal. *Ibid.* 107, 108.

Upon an Appeal of Murder the Defendant was found guilty of Manslaughter.

But it might have been Not guilty generally.

Afterwards pardoned.

The Sheriff ought to deliver the Writ into the Court: And the Delivery to an Infant Plaintiff, held a great Misdemeanor.

One convicted of Murder or Manslaughter, and not called to Judgment, may plead his Conviction to an Appeal.

the Court would

Where the Court of King's Bench is bound to call the Party convicted to Judgment, and allow him his Clergy.

The King can't pardon the burning in the Hand in an Appeal.

Where the Appeal shall be tried before the Indictment.

How it shall be, if tried upon the Indictment before the Appeal.

3 H. 7. cap. 1.

An Appeal brought the same Sessions, after Conviction of Manslaughter: The Court ought to allow him his Clergy, which he may plead in Bar to the Appeal.

Where Clergy bars an Appeal of Murder.

For Robbery, either the Master or Servant may have it.

May be by Bill.

When an Appeal of Robbery may be brought.

When an Appeal of Murder must be brought.

All Principals and Accessories must be joined.

How the Writ and Count must be against Principals and Accessories.

Count in Appeal of Death.

Where several make Default.

Where to plead in Abatement, and not guilty also.

Abatement, and also Not guilty, if not where Life is in Danger.

What is a good Plea in an Appeal.

Where the Appellee may be arraigned at the King's Suit, and where not.

How the Appellor shall be punish'd, when the Appellee is found Not guilty.

See more upon this Head in Gen. Abridgment, Title Appeal, from Fol. 288, to Fol. 500.

Where a Person is convicted of Manslaughter, upon an Indictment, and is allowed the Benefit of his Clergy, and his reading as a Clerk; this bars the Appellant of his Appeal of Murder. *Kel. Rep. 94.*

If the Servant be robb'd of the Master's Goods, the Master or Servant may have the Appeal. *Hale's Pl. Coron. 184.* He that begins first, shall recover, and prevent the other of his Action. *Staundf. 60. b.*

An Appeal may be by Bill, as well as by Writ, in *Banco Regis*, or before Justices of Assize and Goal-Delivery. *Staundf. 64. b.*

An Appeal of Robbery may be brought twenty Years after the Robbery committed, and shall not be bound to bring it within a Year and a Day, as in an Appeal of Murder. *4 Leon. Case 58.*

All Principals and Accessories before and after, must be joined in one Appeal. *4 Co. 47. b.*

In an Appeal by Original, both Principals and Accessories are generally charged alike, without any Distinction of who are Principals, and who Accessories, until the Plaintiff counts upon his Writ. *Co. Litt. 127. a.*

How the Count in an Appeal of Death ought to be, see *6 E. 1. cap. 9.* See *Danv. 495.*

If an Appeal be brought against several, and all but one make Default, yet the Plaintiff ought to count against all. *4 Rep. 47. b.*

If in an Appeal of Maihem, the Defendant pleads in Abatement, and *quoad* the Felony and Maihem, Not guilty; by this his Plea in Abatement is waved: For a Man shall not be allowed to plead in

Abatement, and also Not guilty, if not where Life is in Danger. *Cro. Eliz. 495. Poph. 115. Om. 59, 60.*

Where *Auter foits acquit* is a good Plea, there *Auter foits convict* is a good Plea. *2 Leon. Case 111.*

If the Appellant dies before Verdict, the Defendant shall be arraigned at the Suit of the King; but if the Appellee's Life hath been once in Jeopardy, he shall not be again drawn into Danger. *Per Wray Chief Justice. Ibid.*

The Appellee being acquitted, the Appellor shall be punish'd with one Year's Imprisonment, and shall pay the Party what Damages the Court shall appoint.

See more upon this Head in Gen. Abridgment, Title Appeal, from Fol. 288, to Fol. 500.

to admit a thing which he knows not what it is, and may be prejudicial to him to admit it.

There an Attorney of the Common Pleas or there an Attorney of the Court to appear for the Client, this shall be a good Warrant for the Attorney of this Court, and the Attorney of the Common Pleas, if he had no appearance, shall be only answerable to the Court.

Appearance

If an Attorney do promise to appear for his Client, and yet afterwards refuse to appear according to his promise, the Court will compel him to appear for him, although he said he had no appearance. **Appearance, Sec. Declaration. Infant.**

Apppearance in the King's Bench, is the Defendant's filing either of Common Bail or Special Bail, if the Action be by Bill; but if it be by Original, then the Appearance must be with the Philazer of the County where the Arrest was. But if the Appearance be in the Common Pleas, then it must be enter'd with the Philazer there; But if it be by Bill, (which in some few Cases it is) it must then be enter'd with the Prothonotary.

If an Infant be sued, he cannot appear or plead by Guardian, without Admittance; and if he do, it is a Misdemeanor in the Attorney, for which the Court may punish him if they please. *Pasch. 21 Car. 1. per Magistrum Livesay & alios Clericos.*

Infant may not appear by Guardian without Admittance.

Bond for Appearance given to the Sheriff before the Delivery of the Writ, held good. *1 Keb. 554. pl. 6.*

Attorney so appearing, guilty of a Misdemeanor, and punishable.

Bond for Appearance before Delivery of the Writ, good.

If one do give an Attorney a Warrant to appear for him, and shall afterwards repeal this Warrant on Purpose to delay his Appearance, the Court will notwithstanding the repealing of his Warrant, compel his Attorney to appear for him in such a manner as by the Rules of the Court he ought to have appeared, if his Warrant had not been repealed. *Trin. 22 Car. 1. B. R.* For the Law favours not Delay, nor will leave it in the Power of the Defendant to countermand it, but will have speedy Justice to be done.

A Man gives a Warrant to an Attorney to appear for him, and after repeals it, yet the Court will compel the Attorney to appear.

Though one do appear in Court upon the Return of a Writ issued forth against him, yet he doth not admit the Writ to be good by such his Appearance; for he cannot have Oyer of the Writ, until the Party hath declared against him. *Hill. 22 Car. 1. B. R.* For he is arrested upon a Warrant made by the Sheriff upon the Receipt of the Writ, and doth not see the Writ. And the Law will not presume any Person to

Appearance admits not the Validity of the Writ, and why.

to admit a thing which he knows not what it is, and may be prejudicial to him to admit it.

Attorney of C. B. ordering Attorney of B. R. to appear for his Client, a good Warrant.

Where an Attorney of the Common Pleas orders an Attorney of this Court to appear for his Client, this shall be a good Warrant for the Attorney of this Court, and the Attorney of the Common Pleas, if he had no Authority from the Defendant, shall be only answerable to him.

Attorney promising to appear, and afterwards refusing, the Court will compel him;

and if he will not, Attachment lies against him.

If an Attorney do promise to appear for his Client, and yet afterwards refuseth to appear according to his Promise, the Court will compel him to appear for him, although he said he had no Warrant to appear. *Hill. 22. Car. 1. B. R.* And if he will not appear upon the Rule of the Court, an Attachment lies against him for his Contempt to the Court. *Pasch. 23. Car. 1. B. R. and Mich. 24. Car. 1. B. R.* Yet if in Truth he had no Warrant, and do appear, his Client, if he be prejudiced thereby, may have an Action upon the Case against him; therefore let Attorneys be circumspect what they do.

If several Defendants be in one Declaration, Attorney needs not appear for more than he has a Warrant to appear for.

If there be divers Defendants put into one Declaration, an Attorney is not bound by the Rules of the Court to appear for more of them, than those from who he hath Warrant to appear. *Pasch. 24. Car. 1. B. R.* For their Cases may be different, though the Declaration be joint, and every one may chuse his own Attorney.

Defendant's Attorney receiving a Declaration, is obliged to appear.

If the Defendant's Attorney doth receive a Declaration against his Client from the Plaintiff's Attorney; this Acceptance obligeth the Attorney to appear to it. *11 Nov. 1650. B. S. 24 Maij. Pasch. 1650. B. S.* For thereby he admits his Client to be in Court, and takes upon him the Defence of his Cause.

An Infant ought to appear by Guardian, not by Attorney, and why.

An Infant ought to appear by his Guardian, and not by his Attorney; for he cannot make a Warrant to authorize an Attorney to appear for him, but the Court may assign him a Guardian with his Consent. *Pasch. 24. Car. 1. B. R. Trin. 1650. B. R.* So that his Appearance by an Attorney, is no Appearance in Law, because it is by one that hath no lawful Authority to appear, and the Law approves only of Things lawfully done.

The like was held by Glyn Chief Justice, *Mich. 1656. B. S.*

No Appearance but by Special or Common Bail.

There can be no Appearance in this Court but either by Special or Common Bail; for it is the putting in of Bail that attacheth the Cause in Court. *7 Maij, 1650. B. S.*

Attorney promising to appear, compellable to put in Common Bail.

If an Attorney promiseth to appear for his Client, the Court will compel him to put in Common Bail for him; for the Promise to appear implies the other.

Appearance.

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If one appear by a Name which is not in truth his right Name, and thereupon the Plaintiff declares against him by that Name, he shall be stopped afterwards to say that he is not right named. 20 Oct. 1650. B. S. For he shall not be suffered to take Advantage of his own Wrong to prejudice another thereby.

If Defendant appears by a wrong Name, and Plaintiff declares against him by that Name, Defendant is stopped to say he is not rightly named.

If the Attorney appears for his Client, but *de bene esse*, that is, if his Client shall like and approve of it; if his Client shall refuse to appear, he may in some short time afterwards return the Declaration to the Plaintiff's Attorney, with his Answer, that his Client will not appear, and then he is not bound to plead unto it. 14 Nov. 1650, B. S. For this was not an absolute, but a conditional Appearance.

Attorney appearing for his Client *de bene esse*, if his Client refuse to appear, may return the Declaration to Plaintiff's Attorney.

In all Transitory Actions, where the Declaration came in above six Days before the End of the Term next after the Appearance, or the Term wherein the Appearance was, the Defendant must that very Term (and cannot afterwards) move to alter the *Venue*; neither can the Plaintiff, after the Effoin-Day of the subsequent Term after the Appearance, alter his own *Venue*, tho' he would pay Costs; or give an *imparlance*. *Pasch. 21 Cur. 2. R.*

When to move to alter a *Venue*.

Judgments in Ejectment against Casual Ejectors, for want of an Appearance, shall be set aside, and Restitution granted; if no *Latitat* hath been sued out against, nor Common Bail filed for such casual Ejector, or Nominal Defendant, within 14 Days after such Appearance. *Trin. 4 W. & M. per Curiam.*

When the Plaintiff may alter his own *Venue*.

Judgment against the casual Ejector, not good, if Common Bail be not filed in 14 Days after Appearance.

In all Cases, where Process may issue forth to take the Body of the Person, if an Appearance only, and not Bail is required, there every such Person must, upon an Arrest, cause Common Bail to be filed, which is an Appearance upon Record.

In what Cases Common Bail must be filed.

be filed, which is

Where the first Process in an Inferior Court is a *Capias* (which ought not to be) it is saved by an Appearance. *Lutw. 954.* Because the Defendant hath by his Appearance admitted the Process, by which he is brought into Court, to be legal.

Where an Appearance in an Inferior Court admits the Process, which brought him into Court, to be good.

Where the Defendant appears upon any Process, altho' the Day of Appearance be not lawful, yet he shall be put to answer. 2 Leon. Case 4.

When the Party hath appeared, he shall answer.

Where the Defendant pleads that he appeared, he ought to conclude his Plea *prout per Recordum inde apparet*. *Cro. El. 466. pl. 16.*

Apparante must be tried by the Record.

The Principal cannot now give a Warrant of Attorney (as the Practice formerly was) for an Attorney to appear for his Surety.

Principal cannot authorize an Attorney to appear for his Surety.

Where Delivery of a Declaration dispenses with the Bail.

If where Special Bail is required, the Plaintiff's Attorney doth (before any Bail put in) deliver a Declaration to the Defendant's Attorney (unless it be only to shew such a Cause of Action as requires Bail) he shall not afterwards compel the Defendant to put in good Bail; but Common Bail shall serve.

When to plead when the Writ is Special, with the Declaration in it.

In Com. Banc.

In the Court of Common-Pleas, upon a Special *Capias* issued forth, with the Cause of Action therein express'd, the Defendant is, by the Rules of that Court, to appear and plead in one and the same Term. But it is not so in the King's Bench where the Suit is commenced by Bill, for there he hath Liberty to imparl to the next Term. But the Practice is the same in the King's Bench with that in the Common-Pleas, where the Action is by Original: And the Reason of it is, That when it is by a Special Original, the Declaration is comprized in the Writ, which is not so in a *Latitat*.

And why.

Where Judgment shall be by Default upon a *Scire facias* for not appearing.

quod habeat Executionem, by Default.

Audita Querela lies upon two *Nichils*, not upon a *Sciri feci*, in Case of a Release.

The several Ways by which a Defendant may appear.

Two *Nichils* returned upon a *Scire* and *Alias scire facias*, amount to a *Sciri feci*; whereupon if the Plaintiff gives a Rule, and the Defendant doth not appear, the Plaintiff shall have his Judgment, But where a Man hath a Release or any other Matter which he might have pleaded, there he shall not be absolutely concluded without a *Sciri feci* returned. For after Two *Nichils*, he may have his Writ of *Audita Querela*, which he cannot have after the Return of a *Sciri feci*.

There are but four several Ways by which a Defendant can appear, (*viz.*) either in *Propria Persona*, *per Attornatum*, *per Guardianum*, or *per Proximum Amicum*: And regularly the first two are the common Ways, and the others are Privileges given to Infants under Age.

Show. Rep. 165.

Vide postea Tit. Declaration and Judgment.

Appportionment.

Apportionment.

See Common Appurtenant.

Apportionment is a dividing into Parts a Rent or Thing which is dividable, and not entire and whole. And for that the Thing out of which the Rent, &c. was to be paid, is separated and divided, the Rent, &c. shall be divided, having respect to the Parts.

Apportionment, what.

There shall be an Apportionment where the Division is not by the Act of the Party, but by the Law. *Cro. Eliz.* 771, 772.

Where there shall be an Apportionment, and where not.

If Lessee for Years of twenty Acres grants his Interest in ten Acres, this was an Apportionment at the Common Law. *Moor, Case 230.*

Lessee for Years of 20, grants his Interest in 10 Acres, this shall be apportioned.

A Lease for Years of two Acres rendring Rent, the Lessee surrenders one Acre, the Rent shall be apportioned: *Aliter* where the Grantee of a Rent-Charge purchases part of the Land; for there all is extinct. *Moor, Case 231.*

A Lease of two Acres; one is surrender'd, the Rent shall be apportion'd.

Where the Grantee of a Rent-Charge purchases part of the Land, the whole is extinct.

If the Lessor recovers in Waste part of the Land against the Lessee, there shall be an Apportionment. *Moor, Case 255.*

Where Lessor recovers against Lessee part of the Land in Waste, there shall be Apportionment.

No Apportionment shall be of a Rent-Charge or Rent-Seck, for this is not within the Statute of *Westminster*, 3 Car. 2. which gives an Apportionment. See 2 *Inst.* 503.

Shall not be of Rent-Charges, or Rent-Seck. *Westm.* 3 Car. 2.

When a Rent, reserved upon a Lease for Years, is to be apportioned; if in an Action of Debt for it the Lessor demands more than he ought, upon *Nil debet* pleaded, the Lessor shall recover only so much as shall be apportioned and assessed by the Jury, and he barred for the Residue. 3 *Rep.* 24. a.

How Rent to be apportioned.

A Man hath Common Appurtenant (by Grant or Prescription, *Danv.* 504.) in forty Acres to ten Acres of Land, for all his Cattel Levant and Couchant, and sold Part of ten Acres; the Common shall be apportioned, and each shall have Common for the Cattel Levant and Couchant on his Part. *Hob.* 237. 8 *Rep.* 78. b. But if he buys part of the forty Acres, it is lost. See *Heb.*

Common Appurtenant for Cattel Levant and Couchant shall be apportioned.

Heb. 25. and 235. Co. Litt. 122. a. 8 Rep. 78, 79. But it is otherwise in case of Common Appendant, because it is of common Right. *Co. Litt. 112. a.*

The Alienee shall hold *pro Particula.*

Westm. 3 Car. 2.

Apportionment upon a Lease of Freehold and Copyhold together.

Where part of the Reversion is granted.

Where part of the Rent is released.

So upon an Eviction, or a Recovery by *Eigne Title.*

Where it shall be in the Case of a Rented Common.

It shall be in Case of a Rent, where the Moiety of a Reversion is extended.

It must be by a Jury, not upon a Demurrer.

Upon an Eviction, how the Particulars of the Land must be set out.

If a Lessor takes a Surrender of Part, there shall be an Apportionment.

It must be shewn in the Avowry, or Declaration for Rent.

If there be Lord and Tenant of twenty Acres by Fealty, and 10 s. Rent, and the Tenant aliens two Acres in Fee, the Alienee shall hold the two Acres *pro Particula* by the Statute of Westminster, 3 Car. 2. 2 Inst. 533.

A Man leases Freehold and Copyhold (with the Lord's Licence) for Years, reserving a Rent, and afterwards grants the Reversion of the Freehold to another, and the Lessee attorns; the Rent shall be apportioned, for this waits upon the Reversion. *Cro. El. 604, 605, 622.*

A Man leases three Acres for Life or Years, rendering of Rent, and afterwards grants the Reversion of one Acre, the Rent shall be apportioned. *Co. Litt. 144. 8 Rep. 79. b.*

If a Grantee of a Rent releases part of the Rent to the Grantor; this doth not extinguish the Residue, but it shall be apportioned; because the Grantee dealeth only with the Rent, and not with the Land. *Co. Litt. 148.*

If the Lessor enters for a Forfeiture into Part of the Land, the Rent shall be apportioned. *Co. Litt. 148.* So likewise where Lessee for Life or Years is evicted, or a Stranger recovers by an *Eigne Title.* *Dyer 56. pl. 14.*

A Man prescribes to have Common for two Yard-Lands for four Beasts, four Horses, and sixty Sheep, *viz.* When the Land is sown, to have Common after the Severance of the Corn; and when not sown, to have Common all the Year; and he leases for Years one of the Yard-Lands, the Lessee shall have Common *pro Rata.* 13 Co. 66. 2 Brownl. 297, 298. 1 Ventr. 385, 386.

A Man leases for Years reserving a Rent, and afterwards one Moiety of the Reversion is extended upon an *Elegit*, he shall have a Moiety of the Rent, and it shall be apportioned. *Hill. 10 Jac. Cambell's Case.*

An Apportionment cannot be made upon a Demurrer, but it must be done by a Jury. *Danv. 509. Letter E.*

If to an Avowry for 40 l. Rent, the Plaintiff pleads an Eviction of Part, he ought to shew how much of the Land in Value was evicted, and how much remains.

If a Lessor take a Surrender of Part of the Land, there shall be an Apportionment; and the Lessor in his Avowry or Declaration for Rent ought to shew the Apportionment, and to demand what was due for the Remainder. *Cro. Jac. 160. pl. 14.*

Apprentice.

See Master and Servant.

Apprentice is one that is bound by Indenture, or otherwise, to another Person, for a Term of Years, to learn his or her Art or Mystery.

No Master or Wardens, or Rulers of Fraternities, shall take for the Entry of an Apprentice into their Fraternity above 2s. 6d. nor above 3s. 4d. for the Entry after his Term is expired, upon the Forfeiture of 40 l. the one half to the King, the other to the Informer.

No Apprentice or Journeyman shall be restrained by Oath or Bond from keeping of a Shop.

Neither shall the Wardens of the Fellowship take other Fees than those above-mentioned for the Entry or making free of any Apprentice upon the Penalty above-mentioned. *Ibid.*

Several Orders about Apprentices, see the Statutes at large.

An Action of Covenant was brought in London against an Apprentice for not serving out his Time. He pleads Infancy; the Plaintiff replies the Custom of London, That an Infant may bind himself with Covenants only to serve as an Apprentice: And upon a Demurrer the Court was divided, whether it were not a Departure? And thereupon the Court gave the Plaintiff Leave to discontinue and begin *de Novo*, and count upon the Custom of London, that an Infant may bind himself an Apprentice. 1 Keb. 376. pl. 76. 512. pl. 85. Moor, Case 280.

Covenant for Apprenticeship; Defendant pleads a By-Law in London, that if any Freeman takes the Son of an Alien an Apprentice, the Covenants shall be void: Adjudged no Plea; for such By-Law cannot make the Covenants void, but may inflict a Punishment upon the Master. Moor, Case 562.

Appropriation, See Impropriation.

2 A

Apprentice, what.

What shall be paid up on binding and making free of Apprentices.

22 H. 8. cap. 4. d. 1.

Apprentices or Journeyman not to be restrained from keeping of a Shop.

28 H. 8. cap. 5.

Orders about Apprentices.

5 Eliz. cap. 4.

An Apprentice under Age may bind himself by the Custom of London; and an Action lies against him upon the Custom, upon a Breach of his Indentures.

A By-Law cannot make an Apprentice's Covenants void, but may punish the Master.

Approve.

Approbement.

Sec { Common.
Notanter.

Approbement, what.

Approbement is where a Man hath Common in the Lord's Wastes, and the Lord incloseth part of his Waste for himself, leading sufficient Common, with Egress and Regress, for the Commoners; this Inclosing is called Approbement.

Lords of Mannors may approve.
20 H. 3. cap. 4.
Statute of Merton.

The Notanter Statute,
13 E. 1. cap. 46.

Treble Damages given in an Affize.

All above three Acres may be laid open by the Lord.
3 & 4 E. 6. r. 3.

How it is where the Lord doth not leave sufficient Common.

Treble Damages by 3 & 4 E. 6. r. 3. sect. 4.

Where Tenant Paravail may approve against Lord Paramount.

Paravail may approve against the Lord Paramount. F. N. B. 398. E.

The Lord may approve against a Commoner, who hath Common appendant. Not against a Commoner by Grant.

A further Exposition of the Statute of Merton, Westm. 2. 18 E. 1. r. 46. Merton was between Lord and Tenant. Westm. between Neighbour and Neighbour.

The Statute of Merton, 20 H. 3. cap. 4. gives the Lords of Manors Power to inclose, leaving sufficient Pasture, Egress and Regress, for the Commoners.

See the Statute which gives the Notanter Writ made 13 E. 1. cap. 46.

Which Statutes by another made 3 & 4 E. 6. cap. 3. are confirmed with an Addition of treble Damages to be recovered in a Writ of Affize.

And also where Houses have been built upon Wastes, what more than three Acres, which shall be taken out of the Common and laid to it, may be laid open by the Owners of the Wastes.

If the Lord approves the Common, and doth not leave sufficient Common to the Tenant, he may have a Writ of Affize. F. N. B. 276, 277. Letter B. and shall recover treble Damages. Per 3 & 4 E. 6. cap. 3. sect. 4.

The Lord Paramount may have Common appendant in the Lands of the Tenant Paravail to his Lands which he hath by Purchase, and the Tenant Paravail may approve against the Lord Paramount. F. N. B. 398. E.

By the Common Law the Lord may approve against any who hath Common Appendant, but not against a Commoner by Grant. 2 Inst. 474.

The Statute of Merton only extended between Lord and Tenant; then came the Statute of Westminster 2. and enacts, That it shall extend between Neighbour and Neighbour; nay, though it be one dwelling in another Town, if the Commons join together: Also, if the Lord hath Common in the Tenant's Ground, the Tenant may approve. 2 Inst. 475.

Note,

Approbement.

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Note. Neither of these Statutes extend to any other Common but Common appendant or appurtenant to his Tenement, and not to a Common in gross to a certain Number. *2 Inst. 475.*

These extend to Common appendant or appurtenant, not to a Common in gross to a certain Number.

Appurtenant and Appendant.

Apportionment.

Common.

See

Pertaining.

Unity of Possession.

The Difference between Appendant and Appurtenant, and the Word Pertinents, used indifferently for both. *Co. Litt. 121. b.*
See the next Paragraph.

Difference between Appendant and Appurtenant.

Things Appendant are ever by Prescription, but Things Appurtenant may in some Cases be created at this Day: As if one grant Common of Estovers to be burnt in his Manor, these are Appurtenant to the Manor. *Co. Litt. 121. b.*

Yards, Orchards and Gardens are Appurtenances to a Messuage; but Lands cannot be said to be appurtenant to a Messuage, though they be used with the Messuage: For the Messuage is a Messuage, though the Lands be taken away. (*Hill. 23 Car. 1. B. R.*) But it is not so, if the Yards, Orchards and Gardens are taken away from it; for then it becomes but a Cottage or Tenement.

Yards, &c. are Appurtenances to a Messuage; but Lands are not.

One Messuage cannot be appurtenant to another Messuage, for both are entire Things of themselves. (*Pasch. 24 Car. 1. B. R.*) And Things that are entire, are so themselves, that they are without Relation to other Things as of Part of them, or as dependant upon them. See Title Common.

One Messuage cannot be appurtenant to another.

Where Men have Mills or Houses, to which Water-courses and Estovers are appendant or appurtenant, and they are blown down or burnt, &c. by Act of God: If the Owner re-edifie them in the same Place and Manner as before, they shall have the ancient Appendants and Appurtenances. *4 Rep. 86. a. b.*

Where the ancient Appendants and Appurtenances shall continue.

Land.

Appurtenant and Appendant.

Land cannot, as to the Right of the Word *Pertinentis*, be appurtenant to the House; but the Word *Pertinentis* shall be taken in the Sense of usually letten or occupied with the House, or lying to the House. *Hill and Grange. 1 Plow. 170. See Title Devise.*

Though Land may pass in a Deed as appurtenant to an House, yet it can't be so in pleading.

Although Land may pass in a Deed as appurtenant to an House, by the Reputation and Common Parlane, and the Intent of the Parties, yet in Pleading it ought not to be so alledged. *Cro. Eliz. 918. pl. 11. 919. See Title Devise.*

How long time will make a Thing pass as Parcel or belonging.

Land shall pass in a Writ or Lease as pertaining to an House which hath been occupied with it for ten or twelve Years; for by that time it hath gain'd the Name of Parcel or belonging. *Cro. Eliz. 16. pl. 7. Cro. Car. 308. Cro. El. 704.*

A Conduit and Pipes shall be an Appurtenant to an House.

A Man builds an House, and erects a Conduit for it on some part of his Land, and afterwards sells the Land to another; the Conduit and Pipes shall still remain with the House, and he may amend them. *Cro. Jac. 121.*

The Commencement of Common Appendant.

The Commencement of Common Appendant was thus: When a Lord enfeoffed another with arable Land, to hold of him in Socage, the Feoffee *ad manutenedum Socce* shall have Common in the Lord's Wastes for his necessary Beasts that manure his Land, which Common Appendant is of common Right, and commences by Operation of Law in favour of Tillage, and need not to be prescribed for, and is only for Horses and Oxen who plow the Land, and Cows and Sheep who feed the Land. *4 Rep. 37. a.*

Common Appurtenant, what.

But if an House, Meadow and Pasture, as well as arable Land, have had Common, Time out of Mind; this is Common Appurtenant, and not Common Appendant. *4 Rep. 27. a. b.*

Common Appendant may be apportioned.

Common Appendant may be apportioned, because it is of common Right; and if the Commoner purchase part of the Land, in which, &c. yet be apportioned; and in what manner, see *4 Rep. 37. 38.*

Common Appurtenant cannot.

But in case of Common Appurtenant, which is against common Right, by Purchase of any part of the Land, in which, &c. the whole Common becomes extinct. *4 Rep. 37. b.*

Where Unity extinguisheth Common Appendant.

Unity of Possession of the entire Land to which, &c. and of the entire Land in which, &c. extinguishes Common Appendant.

Of what Things there may be an Appendancy.

One corporeal Thing cannot be appendant to another corporeal Thing; but one incorporeal Thing may be appendant to a corporeal Thing. *Pl. Com. 170. Co. Litt. 121 b.*

Appurtenant and Appendant.

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Common of Turbary or Estovers cannot be Appendant or Appurtenant to Land, but to an House to be spent there; for there must be an Agreement in Nature and Quality. *Co. Litt. 121. b.*

There must be an Agreement in Nature and Quality.

A Seat in a Church cannot be claimed by Prescription, as Appendant to Land, but to an House: For the Seat belongs to the House in respect of the Inhabitancy. *Co. Litt. 121. b. 122. a.*

A Seat in a Church belongs to an House, not to Land.

Appendancy cannot be made presently; but by a long Tract of Time. *1 Leon. 26.*

How an Appendancy can be made.

The Services of a Manor are incorporeal, yet an Advowson may be appendant to them. So may one Advowson to another. *4 Leon. Case 348.*

An Advowson may be appendant to Services. So may one Advowson to another.

Arbitrament, See Award.

Arrest.

See Actions.
Attorney.
Bailiff.
Latitat.
Privileges.
Sheriff.

An Arrest is when one is taken and restrained from his Liberty by some Legal Officer, who hath, by some Legal Process, Authority given him for so doing.

An Arrest, what.

The Court declared their Opinion, That none of the King's Servants in Ordinary can be arrested without Notice first given to my Lord Chamberlain, who cannot privilege any perpetually, but in convenient time must either remove such, or make them pay their Debts, the Privilege being the King's, not the Party's. But if the Bailiffs without Notice do arrest any such, the Messenger of my Lord Chamberlain cannot rescue the Prisoner by his Letter, (the Arrest being lawful) nor his Warrant, but the Party is punishable for his Contempt; for no Man can know the King's Servant by his Face, but he must shew his Privilege upon the Arrest; yet the Court allowed the Lord Chamberlain's Warrant may be to take up the Plaintiff that sued and detain'd, and not the Bailiff, if they had no Notice before the Arrest that he was the King's Servant. *2 Keb. 3.*

Of the Privilege of the King's Servant in Ordinary from Arrests.

That the Plaintiff, not the Bailiff, is punishable.

The King's Servant is not so privileged from Arrests, but that the Sheriff ought to return his Writ, unless he sheweth his Privilege on the Arrest. *1 Keb. 40. Pl. 108.*

The Sheriff ought to return his Writ.

2 B

See

Arrest after Effoin-Day, where void.

The Queen's Servants have no Privilege.

no more Privilege than a Servant of a Queen Dowager, but only the King's Servants and Parliament-Men. *Ibid.* 842. Pl. 33.

Arrest upon Sheriff's Warrant before Writ delivered, is a Trespass.

be delivered afterwards. 1 *Saund.* 298, 299. *vide* 2 *Keb.* 173, 838.

Arrest before Writ sued out, not justifiable by Antedate.

Officer to set down the Day of his signing the Writ.

Bailiff not to take a Warrant to acknowledge a Judgment, but in Presence of Defendant's Attorney.

Serjeant of either Counter may arrest without Sheriff's Warrant, if an Action be enter'd.

Arrest by Sheriff of a County within a Liberty, good, without a *Non omittas*.

A Clerk of the Court may not be arrested for any Thing not criminal.

that doth arrest him is punishable by the Court. *Trin.* 23 *Car.* 1. *B. R.* And therefore such an Arrest is accounted to be vexatious, which the Law warrants not.

See where Arrest after Effoin-Day is void, 1 *Keb.* 718. Pl. 47.

The Court discharged one being committed by the Queen's Vice-Chamberlain to a Messenger of hers for arresting her Servant; and *per Cur.* Such have

If a Sheriff make a Warrant to arrest a Man, and the Bailiff arrest him accordingly, and that before any Writ delivered to the Sheriff, it is without all Controversy a Trespass, tho' a Writ

That an Arrest before the Writ actually sued out is not justifiable by Antedate, 3 *Keb.* 213. Pl. 21.

Note, That by a Statute 9 & 10 *W.* 3. chap. 25. It is Enacted, That every Officer or Clerk in the Courts of *Westminster*, shall set down the Day, and Year of his Signing any Writ of Arrest, upon such Writ, and duly enter the same; on penalty of 10*l.*

That no Bailiff or Sheriff's Officer shall presume to exact or take from any Person being in his Custody by Arrest, any Warrant to acknowledge a Judgment, but in the Presence of an Attorney for the Defendant, which Attorney shall then subscribe his Name thereunto; which said Warrant shall be produced when the said Judgment shall be acknowledged: And if any Bailiff or Sheriff's Officer shall hereafter offend, or do contrarywise, he shall be severely punished for so doing. *Pasch.* 15. *Car.* 2. *Regis.*

If an Action be entred in either of the Counters in *London*, a Serjeant may arrest the Party without the Sheriff's Warrant: *Trin.* 22. *Car.* 1. *B. R.* For the Entry of the Action there, is a Warrant in Law for the Arrest, and the Serjeants are Attendants at the Counters, and may take Notice of such Entries: it being the Custom of the City, used Time out of Mind.

By *Glyn* Chief Justice, *Mich.* 1658. If one be arrested by the Sheriff of the County, within a Liberty, without a *non omittas*, yet the Arrest is good; for the Sheriff is Sheriff of the whole County, but the Bailiff of the Liberty may have his Action against the Sheriff, for entring of his Liberty; but upon a *Quo minus* a Sheriff may enter any Liberty, and execute it *impune*.

A Clerk of the Court ought not to be arrested for any Thing which is not criminal; because he is supposed to be always present in Court, and must answer the Plaintiff there; and therefore he

that doth arrest him is punishable by the Court. *Trin.* 23 *Car.* 1. *B. R.* And therefore such an Arrest is accounted to be vexatious, which the Law warrants not.

One ought not to be arrested upon every slight suspicion of Felony ; but there ought to be a good Ground shewed for their Suspicion, before he is to be arrested; for Fame, Life and Liberty are precious things in the Eye of the Law ; (4 Mich. 16. 9. B. S.) and to be preserved as much as may be with Justice.

A Man ought not to be arrested on a slight Suspicion of Felony.

For the avoiding of Oppression, under the colour of Process issuing out of this Court, it is Ordered, That no Attorney presume at his Peril, to make out, or cause to be made out, any Precept or Writ, with a Clause (*Ac etiam Billa, &c.*) against any Heir, Executor, Administrator, nor in any Case whatsoever, where by the Custom of the Court special Bail is not required; and that if the Defendant shall be lawfully delivered from an Arrest, upon any Process, the said Defendant shall not be again arrested at the same time by virtue of another Process, at the Suit of the same Plaintiff: And if any Attorney or Plaintiff, in the said Process named, offend in the Premises, the Name of every Attorney so offending shall be put out of the Roll of Attorneys; and as well the Attorney, as the Plaintiff in the said Process named, shall respectively be punished, as the Court shall think fit. *Per Cur. 15 Car. 2.*

Attorneys ought not to make out Writs, where special Bail is not required.

Defendant lawfully delivered from Arrest, not to be arrested again at Suit of the same Plaintiff. Punishment of Attorney and Plaintiff offending in the Premises.

One that is not privileged from Arrest, by reason of his Attendance upon his Business, in some Court of Justice, or some other Ways privileged by some special Rule or Order of Court, may be arrested in *Westminster-Hall*, the Courts sitting there. *Mich. 1649. B. S.* And it hath been often done; for it is not the Place, but their Business and Employment that protects the Parties.

Persons not privileged may be arrested in *Westminster-Hall* sitting the Courts.

If an Attorney, Clerk or Officer that is privileged be arrested, and give a Bail-Bond, he loses his Privilege, and must put in special Bail, or give an Appearance as the Cause shall require; for he ought to have lain by it till he had obtain'd a *Supersedeas*, or Rule of Court for his Discharge; and so was it held in the Case of *Mr. Foulkes the Custos Brevium*.

Attorney, &c. being arrested, and giving a Bail-Bond, loses his Privilege.

By an Act, 13 Car. 2. cap. 2. Entituled, *An Act to prevent vexatious and oppressive Arrests and Delays of Suits in Law*, it is Enacted, "That Persons arrested by Process out of the King's Bench or Common Pleas, not expressing the Cause of Action, shall only enter into a Bond of 40*l.* with Security, for his Appearance according to Statute of 23 H. 6. cap. 10.

The Act for preventing vexatious Arrests.

13 Car. 2. cap. 2
23 H. 6. cap. 10.

That upon entring of an Appearance the Bond shall be satisfied.

That if any Person shall maliciously, or for Vexation or Trouble, cause any one to be arrested at the Suit of another Person where there is no Cause of Suit, or at the Suit of another Person he not knowing thereof, and being thereof convicted,

The Penalty of arresting a Man in another Man's Name, and without his Order.

shall

shall suffer six Months Imprisonment without Bail :
 2 Eliz. cap. 8. Sect. 4. and shall before he be discharged, pay the Party grie-
 ved treble Damages, and Costs, and 10*l.* to the Plaintiff named in
 the Action, which Forfeitures must be recovered by Action of Debt.
 8 Eliz. cap. 2. Sect. 4.

A Bailiff can't break
 open Doors to arrest a
 Man for a Subject.

justifiably. *Cro. Car. 537. pl. 2 538.*

An Arrest, what.
 What is not an Arrest.

It is not sufficient for a Bailiff (who hath a War-
 rant against a Man) to say, *I Arrest you at the*
Suit of A. B. Plaintiff in the Writ, but the Offi-
 cer must actually lay hold of him, or touch him, otherwise it is no
 Arrest. *Trin. 3. Anne. B. R. Cro. Jac. 486.*

An Arrest in the
 Night is lawful.

An Arrest in the Night is lawful, as well at the
 Suit of the Party, as at the Suit of the King. *9 Rep.*
65. b. 66. a. See more in Title Sheriff. *Cro. Jac. 486.*

What Bailiff is not
 bound to shew his War-
 rant, and what is,

less demanded.

A Sworn and known Bailiff need not to shew his
 Warrant, although the Party demands it ; neither
 is any other Bailiff bound to shew his Warrant un-
 less demanded. *9 Rep. 69. a. b. Cro. Jac. 486.*

How to justify an En-
 try into a Stranger's
 House to make an Arrest.

How to justify the Entry into the House of a
 Stranger to make an Arrest. *Lutw. 1432, 1433.*

Where an Action lies
 for vexatious Arrests in
 Inferior Courts.

Where an Action will lie for vexatious Arrests
 in Inferior Courts. *Lutw. 1571, 1572.*

An Arrest upon a
 Sunday, is void
 29 Car. 2. cap. 7.

All Arrests upon a Sunday are void, by a Statute
 made *tempore Caroli Secundi* ; which see *Postea* in
 Title Sunday. *29 Car. 2. cap. 7.*

Except in Case of E-
 scapes out of the King's
 Bench or Fleet Prisons.

Note, That by a late Act, 5 Anne, For the bet-
 ter preventing Escapes out of the Queen's Bench and
 Fleet Prisons, it is Enacted, " That it shall be lawful
 " to apprehend and take upon the Lord's Day any
 " Person or Persons, by Virtue of any Warrant or Warrants, grant-
 " ed in Pursuance of this, or of all former Acts for that Purpose.

Assent.

See { Corporation.
Executors.

The Assent of the Major Part of a Corporation to an Act ought to be Simul & Semel, otherwise it is Assensus, not Consensus. Dav. Rep. 48. a.

How the Assent of the Major Part of a Corporation ought to be.

Sometimes an Assent after an Act done shall give Force to it *ab initio*: As an Attornment to a Grant of a Reversion; or an Agreement to a Disfeisin, made to the Use of J. S. makes him a Disfeisor. Dav. Rep. 44.

Where an Assent after the Act done shall give Force to it *ab initio*;

But where a Jointress within 11 H. 7. suffers a Recovery without the Assent of him in Reversion, who afterwards releases to the Recoveror by Fine; this Assent comes too late, and shall never relate to the Recovery, to make it good. Dav. Rep. 48. b.

and where not.

The Assent of an Executor to the first Devisee of a Term, is also an Assent to him in Remainder. March 136.

An Assent to the first Devisee, is an Assent to the Remainder.

The Spiritual Court may compel an Executor to assent to a Legacy out of a Lease. March 97. So also may a Court of Equity.

How an Executor may be compelled to assent.

Assets.

See { Executor.
Heir.

Assets are of two Sorts, Assets Real, and Assets Personal. Assets Real are where a Man is seized of Lands in Fee Simple, and dies seized; the Land which descends to his

Assets, What.

Assets Real and Personal, what.

Heir.

Heir, are Assets Real: And where he dies possessed of any Personal Estate, the Goods which come to the Hands of the Executor, are Assets Personal.

What Lands shall be Assets.

Whether an Equity of Redemption be Assets in Equity.

Reversion upon an Estate-Tail, not Assets.

Where an Heir pleads *Riens per descensum*, and the Plaintiff replies Assets, he must shew where they are.

How to pray Assets, *quando acciderint*.

was denied to be Law; but afterwards between Noel and Nelson, 2 Saund. 226. and 1 Vent. 94. upon a Judgment in the Common Pleas affirmed in the King's Bench, afterwards in Parliament, it was adjudged according to *Mary Shipley's Case*.

An Executor shall be charged with Assets in any Part of the World.

Assets to part of the Debt, upon *plene administravit*.

upon producing of the *Postea*, the Sheriff will return upon the *Fieri facias de bonis Testatoris a Devastavit*, for so much as is found upon the Verdict. 8 Rep. 134. Cro. Car. 167. pl. 13.

Lands of *Cestuy que Trust* shall be Assets by Descent.

they shall be Assets by Descent. 29 Car. 2. cap. 3. See Title Uses.

Against fraudulent Devises.

3 & 4 M. & W. cap. 14. 6 & 7 M. 3. cap. 14.

What Money shall not be Assets.

in the Hands of Executors, shall not be Assets for Payment of Debts.

1 Leon. 87. Case 107.

What shall be Assets.

when the Executor came of Age, he then proves the Will, and releases all

Lands which come to the Heir by Purchase shall not be Assets; it's only Land by Descent which shall be Assets.

Whether an Equity of Redemption in the Heir of the Mortgagor be Assets in Equity. Chanc. Rep. 148. See Bennet and Fox. Ibid. 12.

A Reversion depending upon an Estate Tail, is not Assets; because the Tenant in Tail may bar it whenever he pleases. 6 Rep. 58. b.

In Debt against an Heir who pleads *Riens per descensum*, the Plaintiff replies, that he had Assets, but shews not where; and after a Verdict the Judgment was revers'd upon a Writ of Error for not shewing where the Assets were. Cro. Jac. 502. pl. 13.

How to pay Assets, *quando acciderint*. See Cro. Car. 373. where *Mary Shipley's Case*, 8 Rep. 134. a. was denied to be Law; but afterwards between Noel and Nelson, 2 Saund. 226. and 1 Vent. 94. upon a Judgment in the Common Pleas affirmed in the King's Bench, afterwards in Parliament, it was adjudged according to *Mary Shipley's Case*.

The Jury find Assets in Ireland, it is Surplusage; for if an Executor hath Goods in any part of the World, he shall be charged in respect of them. 6 Rep. 47. a.

Assets are found to Part of the Debt, upon *plene administravit*; yet the Judgment must be of the whole Debt, *de bonis Testatoris si tantum*; &c. viz. The common Judgment against an Executor, and upon producing of the *Postea*, the Sheriff will return upon the *Fieri facias de bonis Testatoris a Devastavit*, for so much as is found upon the Verdict. 8 Rep. 134. Cro. Car. 167. pl. 13.

Lands of *Cestuy que Trust* shall be as liable to Executions, as if he himself had been seized. So also if he dies and leaves Lands to descend to his Heir, they shall be Assets by Descent. 29 Car. 2. cap. 3. See Title Uses.

See the Statute of 3 & 4 W. & M. cap. 14. For Relief of Creditors against fraudulent Devises; made perpetual by 6 & 7 W. 3. cap. 14. See also Title Heir.

Where Lands are devised to be sold by Executors to a particular Use, the Money thereof being in the Hands of Executors, shall not be Assets for Payment of Debts.

An Infant is made Executor, and Administration is granted to B. who had 100 l. in his Hands; when the Executor came of Age, he then proves the Will, and releases all

all Actions to B. This shall be Assets in his Hands. 3 Cro. Eliz. 43.
pl. 3.

Leases are Assets to pay Debts, notwithstanding the Assent of the Executor to the Devise of them. Chanc. Rep. 257.

Leases are Assets to pay Debts, notwithstanding the Executor's Assent to the Devise.

Assignment.

Assignee and Assignment, See

Covenant.
Distress.
Privileges.
Release.

Assignee is he to whom a Thing is appointed or assigned to be occupied, paid or done, and is always such a Person which hath the Thing so assigned in his own Right, and for himself. Terms of the Law, 31. a.

What and who is an Assignee.

The Assignment of a general Error upon a Writ of Error, brought to reverse a Judgment, is to say generally that the Declaration is insufficient; that the Judgment is given for the Plaintiff, whereas it should have been given for the Defendant, &c. And it is not shewed for what Reason it is so, nor any particular Errors assigned. 21 Car. 1. B. R.

Assigning of a general Error, what.

What shall be a good Assignment of a Debt, and other thing, and what not. See Style's Rep. 62, 93, 349.

What shall be a good Assignment.

Also, who shall be said an Assignee, and who not. Pl. 407. Case 1.

Who an Assignee and who not.

Assignment of a Judgment for a just Debt, is not revocable by Letter of Attorney so as to acknowledge Satisfaction by the Plaintiff. 1 Keb. 803.

Assignment of a Judgment not revocable.

If Lessee for Years assigns all his Term to come in his Lease over unto another, he cannot reserve a Rent; for if he do, such Reservation is not good, because the Lessee hath no Interest in the thing, by reason of which the Rent reserved should be paid, and where there is no Reversion, there can be no Distress. (Pasch. 24 Car. 1. B. R. 21 Apr. 1648.) In the Case of *Leach and Davy*, upon a Trial at the Bar. But it seems Debt will lie upon it, as on a Contract, if sealed by the Assignee, and that upon the first Default.

If Lessee for Years assigns his Terms, he cannot reserve a Rent.

Declaration in Debt for Rent Arrear is good without shewing mean Assignments, on Demurrer. Raym. 289, 390.

Declaration in Debt for Rent Arrear, good on Demurrer, without shewing mean Assignments.

The

Assignee of a Reversion may maintain Covenant for Repairs, though not named in the Lease.

So he may in the County where the Lease is made. *Contra* of Debt.

Lessee assigns a Moiety of the Land; and Lessor brought Debt against him for a Moiety of the Rent, and held good.

Lessee, and so his Assignee of a Moiety not chargeable: But the Court held, that the Assignee having the intire Estate in the Moiety of the Land, had privity of Estate sufficient to be charged by the Lessor with the Moiety of the Rent. 2 *Lev.* 231.

Grantees of Reversions to take advantage of the Conditions to be performed by Lessees.

32 *H. 8. cap.* 34.

Forfeiture; and may also have Actions for not performing Conditions, Covenants or Agreements contained in their Leases and Grants, as the Lessors and their Heirs could have had; and so the Lessors shall have against them, as if they had been their own Lessees and Grantees.

Where the Assignor is out of Possession, the Assignment must be upon the Land.

32 *H. 8. cap.* 34 extends not to Covenants upon Estates in Fee or Tail, but only for Life and Years.

Where an Assignee is sued for Rent, the Plaintiff need not set forth the Deed of Assignment.

But where Title is made under it, he must.

What Assignments by Tenant by *Elegit* shall be good, and what not.

good; because the sealing of the Deed upon the Land puts the Grantee into actual Possession. 4 *Jac.* 2. *B. R. Shower's Rep.* 290, 291.

Where the Assignment of a Recognizance is void, and where not.

The Assignee of a Reversion may maintain Covenant for Repairs, although the Assignees are not named in the Covenant in the Lease. 1 *Lev.* 109.

An Assignee of a Reversion may maintain Covenant in the County where the Lease is supposed to be made, otherwise of Debt. *Ibid.* 259.

A Lessee assigned a Moiety of the Land for the whole Term; the Lessor brought Debt against the Assignee for the Moiety of Rent: And moved in Arrest of Judgment, that the Privity of the Estate and Contract both in this Case remained intire with the

Lessee, and so his Assignee of a Moiety not chargeable: But the Court held, that the Assignee having the intire Estate in the Moiety of the Land, had privity of Estate sufficient to be charged by the Lessor with the Moiety of the Rent. 2 *Lev.* 231.

Grantees and Assignees, and their Heirs, Executors, Administrators and Assigns, shall have and enjoy the like Advantages against the Lessees, their Executors, Administrators and Assigns, by Entry for Non-payment of Rent, doing Waste, or other

Forfeiture; and may also have Actions for not performing Conditions, Covenants or Agreements contained in their Leases and Grants, as the Lessors and their Heirs could have had; and so the Lessors shall have against them, as if they had been their own Lessees and Grantees.

Where a Lessee is out of Possession, he cannot assign over his Term off from the Land, but must first enter and re-continue his Possession, or else seal and deliver the Assignment upon the Land. *Dal.* 81. *pl.* 29.

The Statute of 32 *H. 8. cap.* 34 doth not extend to Covenants upon Estates in Fee or in Tail, but only upon Leases made for Life or Years. *Cro. Eliz.* 863. *pl.* 40. *Co. Litt.* 215. *a.*

Where a Man sues an Assignee for Rent, he needs not to set forth a Deed of Assignment: But when he makes a Title under a Deed of Assignment, or justifies under it, there he must shew it. 4 *Jac. B. R.* So if it be an Assignee of an Assignee. *Cro. El.* 373. *pl.* 21. and 436. *pl.* 52.

Tenant by *Elegit* cannot assign before actual Possession, because it is a Chose in Action. But a Sale of the Land after the Delivery by the Sheriff, and sealing of the Deed upon the Land, shall be good; because the sealing of the Deed upon the Land puts the Grantee into actual Possession. 4 *Jac.* 2. *B. R. Shower's Rep.* 290, 291.

The Assignment of a Recognizance to a Stranger is an illegal and void Consideration; but to assign it to the Terr-Tenant by way of Discharge of his Land, is lawful. *Cro. El.* 592.

Assignment.

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Assigning of Decrees in Chancery not liked by the Lord Chancellor, who said that he was mad who would take it. *Chanc. Rep.* 301.

Although Lessee assigns over his Term, yet Debt lies against him by the Lessor or his Heir. But where Lessee assigns over his Term, and the Lessor his Reversion, the Privy is determined, and Debt doth not lie for the Reversioner against the first Lessee. *Moor, Case* 472.

Tenant by *Elegit* or Statute, or Vendee of a Term taken in Execution, shall have Covenant. *5 Rep.* 17. a.

If Lessee for Years covenants to repair during the Term, it binds all Assignees and others, into whose Hands the Estate comes. *5 Rep.* 17. b.

Assignee of an Assignee shall have Covenant; so shall the Executors of the Assignee of the Assignee. *Ibid.*

A Man leases by Indenture, the Lessee covenants for himself, his Executors (not Assigns) to repair the House. Covenant lies against the Assignee, though not named, it being for the Support of the Premises demised. *5 Rep.* 24. b.

So also where the Covenant is to allow every Year fifteen Acres for Pasture, *absque Cultura*; because it is for the Benefit of the Estate, which shall bind him, though not named: But to do a collateral Act, as to build a Wall *de novo*, or the like, shall not bind him, unless named. *Cro. Jac.* 125. pl. 11. 126.

Covenant against an Assignee, where the Lessee covenanted to pay yearly during the Term 40 s. to the Churchwardens of S. and to repair the Houses and leave them so at the end of the Term; and for this Rent and the Repairs the Action was brought, and upon a Writ of Error, Judgment was reversed; because the Assignee is not chargeable with the Covenant for the Payment of the annual Sum, it being a meer collateral Covenant. Also, it is not shewn for what Time the Sum was arrear. *Cro. Jac.* 438. pl. 10. 439. *5 Rep.* 16. b. *Cro. Car.* 207.

Covenant was brought for Rent against the Assignee of the Lessee, who pleads, That before any Rent due, he assigned to J. S. and upon a Demurrer, held a good Plea: Because this is such a Covenant as runs with the Land. (2 *Jac.* 2. B. R.) The Assignee is only chargeable in respect of the Privy of Estate; but it will still lie against the Lessee upon his Covenant. See *Cro. Eliz.* 328. pl. 1. See *postea*.

Decrees in Chancery not assignable.

Debt lies against the Lessee after Assignment, but it lies not against him by the Grantee of the Reversion after his Assignment.

Tenant by *Elegit*, Stat. or upon a *Fi. fa.* shall have Covenant.

Where the Lessee's Covenant binds the Assignees.

Assignee of Assignee, and his Executors, may have Covenant.

Covenant lies against the Assignee, though not named.

And where it lies not unless named.

Covenant against Assignee to pay yearly to J. S. 40 s. and to repair.

Action brought for the 40 s.

Assignee is not chargeable with the 40 s. *per Annum*.

Also not shewn for what time the Sum was arrear.

What Covenants Assignees are chargeable with.

Privy of Estate.

How to declare against an Assignee of a Term.

All Assignments of Trusts must be in Writing.

29 Car. 1. cap. 3.

What Notice of an Assignment shall discharge the Lessee.

Covenant lies not against an Assignee of a Term for Rent due after the Assignment *sans* Notice.

Where Lessor may charge Lessee or Assignee.

Election determined by Acceptance.

Covenant lies for Rent against the Lessee, by the Grantee of the Reversion, after Assignment.

Assignee of a Reversion brings Covenant, it lies without Attornment, but cannot distrein *sans* Attornment.

32 H. 8. cap. 34.

But now note, That Attornments are taken away by a Clause in the Statute for the Amendment of the Law.

Action of Debt, is at Common Law,

4 & 5 Ann. Reg.

4 & 5 Anne, for the Amendment of the Law. See Title Attornment.

But one Breach can be assigned for the Breach of a Penalty.

But one Breach can be assigned for the Breach of a Penalty. If one brings an Action of Debt upon an Obligation that was given for Performance of Covenants, upon Supposition of Breach of Covenants, he could formerly assign but one Breach of Covenant in that Action: (*Trin. 22 Car. 1. B. R.*) For the Assignment of one Breach (if proved) is enough to maintain his Action, and is a Forfeiture of the whole Penalty. But where a Man brings an Action of Covenant, he may assign twenty Breaches, if there be so many

How to declare against an Assignee of a Term. *Lutw. 266.*

All Grants and Assignments of Trusts shall be in Writing, signed by the Party granting or assigning, or by his Will; otherwise to be void. *Vide Statute Of Frauds and Perjuries, 29 Car. 2 Regis, c. 3.*

The Notice of the Assignment of the Term without the Agreement of the Lessor, or Acceptance of the Rent by him of the Assignee, shall not discharge the Lessee from the Lessor in an Action of Debt for Rent. *1 Lev. 32.*

Covenant for Rent against the Assignee of a Term, for Rent due after his Assignment over to another without Notice, doth not lie. *Show. 340, 341.*

If a Lessee assign his Term, the Lessor may charge the Lessee, or his Assignee, at his Election. And if he accepts the Rent of the Assignee, he hath determined his Election, and shall not have Debt against the Lessee for Rent due after the Assignment; but Covenant I conceive he may have. *3 Rep. 24. b.*

Covenant for Rent lies against the Lessee by the Grantee of the Reversion (after Assignment) there being an express Covenant; and this altho' Acceptance of the Rent had been pleaded. *3 Lev. 233. See Cro. Eliz. 617. pl. 2. Cro. Jac. 309. pl. 8. Cro. El. 328. pl. 1.*

The Plaintiff brings Covenant as Assignee of the Reversion. *Curia. Per 32 H. 8. cap. 34.* the Reversion is vested in the Plaintiff, but not to distrein or bring Debt without Attornment; but he may bring Covenant without Attornment. *Woodward vers. Marshal, 8 W. Vide Brett and Cumberland's Case in Cro. Jac. 522.* Because the Statute transfers to the Assignee the Privy of Contract, without more Ceremony: But the Distress, or a Remedy incident to the Grant of the Reversion and therefore the Forms required by the Common Law are to be observed. *Lev. 259, 260.* But Attornments are now taken away by the Statute of

If one brings an Action of Debt upon an Obligation that was given for Performance of Covenants, upon Supposition of Breach of Covenants, he could formerly assign but one Breach of Cove-

Covenants ; for there is a particular Damage to the Plaintiff for the Breach of every particular Covenant : And a several Issue must be taken upon every several Breach. And now by a late Statute made 8 & 9 W. 3. cap. 10. the Plaintiff may, in an Action upon such Bond, assign as many Breaches as he pleaseth. See Title Conditions.

8 & 9 W. 3. cap. 10.

A Statute Merchant or Staple, or Bond, &c. cannot be assigned over to another, so as to vest an Interest, whereby the Assignee may sue in his own Name, but they are every Day transferred by Letter of Attorney, &c. Mich. 22 Car. B. R.

A Statute, or Bond, not assignable to transfer an Interest.

Where a Bond is assigned over, with a Letter of Attorney therein to sue, and a Covenant not to revoke, but that the Money shall come to the Use of the Assignee, although the Obligee be dead ; yet the Court will not stay Proceedings in a Suit upon the Bond in the Obligee's Administrator's Name, though prosecuted without his Consent : For that those Assignments to receive the Money to the Assignee's own Use, with Covenants not to revoke, and also with a Letter of Attorney in them, although they do not vest an Interest, yet have so far prevailed in all Courts, that the Grantee hath such an Interest, that he may sue in the Name of the Party, his Executors or Administrators. Pasch. 12. W. B. R. Deering and Carrington.

The Court favours Assignees by Letter of Attorney to recover to their own Use, in which there is a Covenant not to revoke.

For Assignment of Bail-Bonds, by the Statute of 4 & 5 Anne. See Title Bail-Bonds.

For Assignment of Bail Bonds. 4 & 5 Anne.

A Lessor covenants that if the Lessee or his Assignee be disturbed for Respite of Homage, he shall defalk so much as is levied out of the Rent ; the Lessee assigns his Term : And adjudged that this is a Covenant which runs with the Land, and the Assignee shall have the Benefit of it. Cro. Car. 137. pl. 11. 138.

Where a Covenant to defalk the Rent in case of Disturbance runs with the Land.

If Rent be reserved to him and his Assigns, a Devisee is not an Assignee to take, Per North Chief Justice. 2 Mod. 93. in Margine.

Where a Devisee is not an Assignee to take.

The want of the Word Assignees in a Lease shall not hinder the passing of a Possibility.

Where a Possibility of a Term will pass without the Word Assignees.

Assignment of Bail-Bonds, see Title Bail and Bail-Bonds.

Assize.

Assize and Assizes.

What a Writ of Assize is, and for what it lies.

13 E. 1. cap. 25.
23 H. 8. 6.
27 E. 3. cap. 9.

A Writ of Assize is *Festinum Remedium*. Co. Litt. 153, 154, 159. It lies not for a Nonfeazance. Rol. Abr. 104. Pl. 1, 2. Nor of a Rent issuing out of Cithes barely. Vaugh. 204. It lies for Estovers in a Wood yearly. Hob. 43. 9. Co. 112. b. It lies for Toll of a Mill, not of Suit to a Mill; that must be *secla ad Molen-dinum*. 8 Co. 46. b. It lies for Tenant by Elegit, per 13 E. 1. See 2 Inst. 396, 397. For Tenant by Statute Staple, for Houses, Lands, Rents, Offices; and per 27 E. 3. cap. 9. for Tenant by Recognizance; per 23 H. 8. cap. 6. an Assize de libero Tenemento lies of other Things which lie in Render. 2 Inst. 411. See the Statute of 13 El. cap. 25.

Record of *Nisi prius*, when to be sealed.

Every Record of *Nisi prius*, for the Trial of Issues at the Assizes, must be seal'd within a Month next after the End of the Term. *Per Cur.*

Trin. 15 Car. 2. But this Rule is now alter'd, and the Time limited to three Weeks: But with a Warrant from a Judge, which will cost 2. s. you may seal them at any Time.

None shall be Judge of Assize in the County where he was born or dwells.

33 H. 8. cap. 24.

ty to the King, the

By a Statute made 33 H. 8. cap. 24. It is Enacted, "That no Justice or learned Man in the Laws shall use or exercise the Office of Justice of Assize within any County where he was born or doth inhabit. Penalty 100 l. one Moiety to the King, the other to the Informer. *Sec. 2.*

An Assize maintainable, as well against Pernor of the Profits as Disseisor.

11 H. 6. cap. 3.

But two Forms of Writs of Assize at the Common Law.

In what Cases Writs of Assize lie.

An Assize for Tithes given by

32 H. 8. cap. 7.

In all manner of Writs grounded upon Novel Disseisin, the Disseisees shall recover if they will by such Writs against the Disseisors or their Feoffees; so that the same Disseisors or their Feoffees take the Profits at the time of the Writ purchased.

There are but two Forms of Writs of Assize at the Common Law, *viz.* *Assize de Libero Tenemento* and *Assize de Communia Pastura*. 8 Rep. 45. b. 46. a. b.

In all Cases where Writs of Assize lie, both at Common Law and by Statute, see *Webb's Case*. 8 Rep. from Fol. 45 to 50. b.

A Writ of Assize for Tithe is given by the Stat. of 32 H. 8. cap. 7. *Sec. 1.* and for the Proceedings thereupon, see *Cro. El.* 559. pl. 16.

What

Assize and Assizes.

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What shall be done where the Tenant in the Assize doth plead Joint-tenancy in the Plaintiff.

Where the Tenant
pleads Joint-Tenancy.
34 E. 1. Stat. 1.

Note, a Bailiff can't plead it.

Upon a Writ of Error in an Assize, it was assigned for Error, that at the Day of the Return of the *Hab. Corpora*, the Entry is *quidam Recogn.*

Error in awarding of
a *Decem tales* in a Writ
of Assize.

Assise venerunt & quidam eorum non venerunt, Ideo a Distringas, with a *decem tales*, was awarded, and a Trial had; and *pro defectu Record.* not being in the awarding of the *Tales*, was held to be Error; So also the Sheriff's Name not being to the Return of the *Habeas Corpora*, nor to the Writ where the *decem tales* was; and those were held to be Errors.

Also not indorsing of
the Sheriff's Name to
the *Habeas Corpora*.

Cro. El. 509. pl. 34.

A Verdict and Judgment in a Writ of Assize, where Part was found for the Plaintiff, and Part for the Defendant, with Damages and Costs.

Verdict and Judgment
for Damages and
Costs.

8 Rep. 50. a.

In an Assize, the Defendant shall not esjoin, not cast a Protection, nor pray in Aid of any but the King, nor vouch a Stranger, nor any Party to the Writ, unless he enter presently into the Warranty; also the Parol shall not demur for Nonage of the Plaintiff or Defendant. 8 Rep. 50.

No Esjoin, Protection,
Voucher, or Parol-
Demur.

The King's Bench, or Court of Common Pleas, may hold Plea of Assizes of Land in the County of *Middlesex*, by Writ out of Chancery, and there must be fifteen Days between the *Teste* and the Return of a Writ of Assize: But in all other Counties, Writs of Assize must be returnable at the next Assizes, and may be sued out fifteen Days before the Assizes, and they must be returnable at the next Assizes; and at least eight of the Recognitors must have a View before the Assizes, and be ordered to appear in Court the first Day of the Assizes.

The King's Bench may,
by Writ out of Chancery,
hold Plea of Assizes
for Land in *Middlesex*.

An Assize is to be arraigned in *French*; and first the Plaintiff's Counsel doth pray the Court, That the Defendant may be called, which the Court grants, and thereupon he is called by the Crier of the Court; and if upon his being called, he does appear, than the Defendant's Counsel may, if they think fit, demand Oyer of the Writ of Assize, and the Return of it, which will be granted: And thereupon he may pray Leave of the Court to imparl, which the Court will grant to a short Time after, and the Recognitors will be adjourned by the Court to appear at that Time. This is *Festinum Remedium*, and there is no such quick Dispatch in other Civil Actions. Note, In this Action, the Land, Damages, and Costs, are recovered.

The Manner of Arraigning
of an Assize.

Lands, Damages and
Costs, recovered.

Note, The Jurors that are to try the Assize, are called Recognitors of the Assize; and are (at least eight of them) before the Return of the Writ to have a View of the Thing in demand.

The Jurors are called
Recognitors, and must
have a View.

How the Judgment must be in a Writ of Affize upon a Confession.

In a Writ of Affize the Defendant confessed the Seisin and Disseisin, and that he was Tenant; and the Plaintiff released Damages, and had Judgment to recover *per visum Recognitorum*, and this was assigned to be Error; because the Affize was never taken: But Judgment was given upon the Confession, and held to be no Error; because, tho' the Affize was not taken, yet it must be intended that the Jurors had the View before the Affizes; and unless the Judgment be *quod recuperet per visum Recogn.* if the Plaintiff be redisseised, he can't have a Redisseisin. *Cro. Jac. 334. pl. 2. 335. Vide postea*, the Punishment for a Redisseisin.

What entitles the Plaintiff to a Redisseisin.

A Redisseisin and Post-disseisin was given by the Stat. of Merton. cap. 3. Afterwards came the Statute of Marlbridge. cap. 8. and makes a farther Addition thereto. See 2 *Inst. 115.*

Stat. of Merton. ca. 3.
Stat. of Marlbridge.
cap. 8.

Of the Defendant's Appearance and Pleading.

At the Day given by the Court for the Defendant to appear, and the Recognitors to appear again, the Defendant is called, and if he doth not appear, the Recognitors are sworn to try the Writ of Affize; but if he appears, and pleads to Issue, then they are sworn to try the Issue joined in the Writ of Affize: The Writ, and Count, and Issue, are in *Latin*; but the Plaintiff's Counsel read the Writ and Count in *French*, and then they proceed to give their Evidence. Observe, That in these Actions the Jury view the Land in Question before the Evidence given: But in an Ejectment, the Jury have the View after Evidence given; and not then neither, but by Order of the Court, and Consent of the Parties. But now by the Statute of 4 & 5 *Anna*, for the *Amending of the Law*, there may, by Order of the Court, be a View before Trial in Ejectment or Trespas, &c.

Difference between an Affize and an Ejectment.

When Judgment is to be given.

After the Trial upon a Writ of Affize, the Court gives Judgment immediately, (unless they see Cause to stay it upon a Motion in Arrest of Judgment) and as soon as the Plaintiff hath his Judgment to recover his Seisin, and Damages and Costs signed by the Clerk of the Affizes, he may at the same Affizes, if he thinks fit, make out a Writ of Seisin, and also a *Capias ad Satisfaciendum*, *Fieri facias*, or an *Elegit*, (if the same shall be desired by the Plaintiff) for the Damages and Costs.

What Execution for Damages and Costs.

What the Plaintiff must prove.

How Judgment to be when all are found guilty of the Disseisin, and but one of the Force.

In an Affize the Plaintiff must first prove his Title, then his Seisin and Disseisin.

An Affize was brought against several, who plead *nil tort*, &c. It was found that all the Defendants were Disseisors, but that one of them disseised with Force, and moved that it was naught; for if three or more come to commit a Murder, &c. and only one doth it, they are all guilty. But the Court thought it to be well enough notwithstanding. *Mod. Cases 155.* See the Case.

Assize and Assizes.

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An Assize of an Office was taken by Default, and afterwards tried; but the Defendant was not permitted to plead any Plea. 2 Lev. 120.

The taking of one Third of A. for a Capias, is a sufficient Seisin of the Office of a Filazer to bring an Assize upon. Dyer 114.

A Special Verdict was found in a Writ of Assize of Fresh Force in London; but it not being full and perfect, the Plaintiff sued out a Certificate of the Assize, to make the Recognitors to come again and make their Verdict more certain. 1 Plow. 92. a.

Payment of Rent by a Term, or for Years, is not a sufficient Seisin to maintain an Assize against the Tertenants after the Years expired, by reason of the Imbecility of the Estate of Tenant for Years. 6 Rep. 56 to 59. b. For it is a Paiment only and not a Seisin. Cro. Jac. 142. pl. 20.

For the Proceedings in a Writ of Assize of Novel Disseisin, see *Newis and Scolasticas's Case*. 2 Plow. 411, 412.

For the Proceedings in an Assize of Fresh Force in London, see *Pannel and More*, 1 Plow. 91. So also in another Assize of Fresh Force there. 1 Plow. from 89 to 91. *Pollard & Ux. & Jekel*, where there is a Plea of Abatement and Demurrer to it: And also Nul Tort, Disseisin, found at Four several Times. *Ibidem*.

If Lessee for Years or Tenant at Will be ousted, the Lessor or he in the Remainder may have an Assize, because the Freehold was in him at the Time of the Disseisin. *Kelynge* 109. b.

The Defendant may pray Oyer of the Writ and Count, and shall have it. 2 Bulstr. 160. 3 Mod. 273.

If the Writ of Assize be *de libero Tenemento*, the Demandant may make his Complaint both of Land and Estovers, though an Assize lies at the Common Law for Land, and by the Statute of *Westminster*, 2 Car. cap. 25. for Estovers: 8 Co. 47. b.

It is a common Learning, that in an Assize the Plaintiff need not to be so certain as in other Writs, because the Judgment is to recover *per Visum Recognitorum*; and if the Plaintiff be but so certain, as the Recognitors may put the Demandant in Possession, it is sufficient. Dyer 84. b.

In an Assize for an ancient Office, the Demandant in his Complaint need not shew what Fee or Profit is belonging to it; but in a newly erected Office he must. 8 Rep. 49. b.

How Seisin of an Office to be proved.

What is a sufficient Seisin.

There may be a special Verdict in a Writ of Assize; if uncertain, how to be set right. to be examined,

Tenant for Years pays the Rent; it is not sufficient Seisin to bring an Assize.

The Proceedings in a Writ of Assize of Novel Disseisin.

In an Assize of Fresh Force.

Plea in Abatement, Demurrer, Nul Tort, Verdict.

Four several Disseisins found.

Lessor, or he in the Remainder, may have it.

Oyer of the Writ and Count.

The Demandant may make his Complaint, both at Common Law, and by the Statute of 25. Car. cap. 25.

The Plaintiff need not to be so certain, as in other Writs, and why.

How the Plaintiff must be for an old Office, and how for a new Office.

The

The Plaintiff in an Assize may abridge his Plaint of any part whereunto a Bar is pleaded.

21 H. 8. cap. 3.

The Demandant must make a Title in his Plaint for Rent, not for Land.

An Assize was brought for a Rent-Seck granted out of an House, payable to J. S. in Fee, the first Payment to be at Michaelmas after his Death.

Sixpence was given for Seisin.

The Demand was at the House out of which it issued, not the House where it was made payable.

made payable? And adjudged a good Demand at the House out of which it issued, and that the Non-payment was a Disseisin, and the Sixpence in the Name of Seisin was good. *Cro. Car.* 500.

Where to have a Redisseisin.

How a Bailiff may plead.

The Plaintiff in every Assize from henceforth may sever and abridge his Plaint of any Part or Parts whereunto any Bar is pleaded, as he might do in case the Pleas in Bar had been made and divided to any Certainty or Number of Acres in the Plaint; and the Plaint for the Residue not abridged shall stand.

In an Assize for a Rent-Charge or Seck, the Demandant must make a Title in his Plaint, but not in an Assize for Lands; for there Possession without any other Title, is sufficient. *Jenk. Rep.* 42. *Dyer* 85. b. 6 Co. 56. b.

A Rent-Seck of 4 l. per Annum was granted to A. B. in Fee, issuing out of such an House in D. payable at Michaelmas and Lady-Day, at such an House, to begin at Michaelmas after his Decease, and gave Sixpence in the Name of Seisin; and for Rent due at such a Feast he brings his Assize; the Jury find the Grant of the Rent and Seisin given, and the Demand at the House out of which it was issuing at such a Feast, and that no body was there to pay it; and the Question was, Whether it was a good Demand at the House out of which it issued, or it should have been made at the House where made payable? And adjudged a good Demand at the House out of which it issued, and that the Non-payment was a Disseisin, and the Sixpence in the Name of Seisin was good. *Cro. Car.* 500.

The Enquiry and Punishment of a Redisseisin after Judgment in an Assize, and Seisin delivered by the Sheriff. *Stat. de Merton*, c. 3. 13 E. 1. c. 26.

How a Bailiff may plead. *Keilm.* 117. b. *Doctrina placitandi*, 48.

Assumpsit.

Assumpsit.

Assumpsit or Promise, See { Accord.
Contract.
Frauds and Perjuries.
Request.

Assumpsit is either a voluntary Promise made by a Man to pay or promise any Thing to another; or else where a Man sells Goods to another, the Law makes the Promise that he shall pay for them.

Assumpsit; what.

Upon a Contract for the Sale of Goods, of the Value of 10 l. or upwards, no Action will be, unless the Buyer accept Part of the Goods sold, or give something in Earnest, or some Note or Memorandum in Writing. *Per Stat. 29 Car. 2. cap. 3.*

Where an Action will lie upon a Contract for Sale of Goods.

Stat. 29 Car. 2. cap. 3.

Every Promise to maintain an Action ought to have a sufficient Consideration, and that ought to be a Benefit to him that makes it, or a Disadvantage to him to whom it is made. *March 203.*

What Promises will maintain an Action, and what not.

In every Action upon an *Assumpsit* there ought to be a Consideration, Promise, and Breach of Promise. 1 *Leon. Case 405.*

What makes a good Action upon an *Assumpsit*.

Where two Considerations are laid in a Declaration, although one of them be void, yet if the other be good, an Action lies; but Care must be taken to take all the Damages upon the good Consideration, and but a Penny upon the other; and when you enter up the Judgment, do it with a *Remisit* of the Penny Damages. See 2 *Leon. Case 96.*

Two Considerations; one good, the other not. How to take the Verdict.

The Judgment must be with a *Remisit damna.*

Indebitatus, and says not for what, is naught. *Cro. Jac. 206. pl. 2. 207. 213. pl. 8. 642.* This is in the Case where the Promise makes the Debt, but not where the Debt is only an Inducement. *Latch 219, 220.*

Indebitatus, and says not for what, is naught.

Assumpsit to pay *infra breve tempus* is uncertain, and so no sufficient Consideration to ground an Action upon. *Cro. Jac. 250.*

Infra breve tempus is no good Consideration.

A Promise without a good Consideration, will not maintain an Action.

Every Contract Executory imports in it self a Promise.

Where a *Quantum Meruit* lies for the Use and Occupation of an House.

or Chamber, when he hath no Remedy by Distress or Debt? 2 Jac. 2. *Mason and Beldam*, B. R. 1 Cro. 598. 5 Cro. 242, 786, 859. *Vide postea*, and *Quere* this Matter. See *Danv. Abr.* 28, 29, 30.

In Consideration that the Plaintiff would permit the Defendant to enjoy *omnes Decimas* for seven Years.

2 & 3 E. 6. cap. 13.

Permisset occupare, and good.

A Promise to pay so much in Consideration of the occupying is good, and *Assumpsit* lies for it.

not for the Rent; but adjudged that it is not a Lease, but a Promise, in Consideration of the occupying, for which an *Assumpsit* lies. Cro. Jac. 598. pl. 21.

A general *Assumpsit* lies not for Rent, as it doth in case of a Sale of Goods; but there must be an express Promise.

What is a good Consideration to ground an *Assumpsit* upon.

of this Promise; although he, to whom the Indenture is surrender'd, do take no Estate by this Surrender. For though he take no Estate by the Indenture, yet he may have some Benefit, by reason of the Surrender; and he that surrender'd it, may be prejudiced by the Surrender: And therefore it is Reason that the Party should be repaired by the Performance of the Promise made before the Surrender.

A Promise that is made upon a sufficient Consideration, will well maintain an Action: For the Consideration shall be intended to be the Cause why the Promise was made, and in every Consideration there must be a *Quid pro Quo*.

Every Contract Executory imports in it self an *Assumpsit*. 4 Rep. 94. a.

A *Quantum Meruit* lies for the Use and Occupation of an House, where no Sum certain is reserved; for why should not the Plaintiff have as well such an Action for his Land, as for his House

The Court seemed to be of Opinion, that an Action lies in Consideration that the Plaintiff would permit the Defendant to enjoy *omnes Decimas*, &c. for seven Years; though it was urged that they would not pass but by Grant. But it was answer'd, That here no Interest passes, but only an Agreement for the Enjoyment, and there an *Assumpsit* will lie; and such Agreement shall be a good Discharge upon the Statute of 2 & 3 Ed. 6. cap. 13. Trin. 35 Car. 2.

In Consideration that the Plaintiff would permit the Defendant *occupare* such Land for such a Time, *Assumpsit solvere annuatim* so much at such a Feast. 2 Leon. Case 137.

Whereas the Plaintiff *locasset* a Warehouse to the Defendant in the Parish of S. he promised to pay 8 s. per Week for every Week he held it: And moved, that this is a Lease, and that *Assumpsit* lies

But a general *Indebitatus* doth not lie for Rent. Cro. Car. 343. pl. 7. as it doth in case of a Sale of Goods, where the Law implies a Promise to pay; but there must be an express Promise proved at the Trial. Cro. Car. 414. pl. 2. 415.

An *Assumpsit* or Promise to do a Thing upon a Consideration, that he to whom he made the Promise, shall surrender an Indenture to him, is a good Consideration to ground an Action upon for Breach

Upon

Assumpsit.

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Upon an *Indebitatus Assumpsit*, and a *Quantum Meruit*, the Defendant to all but 10 l. pleads *Non Assumpsit*, but doth not say, whether it is upon the *Indebitatus* or *Quantum Meruit*: And upon a Demurrer it was held to be naught, because the two Counts are several, and it doth not appear to which of the Counts to apply it. 5 W. & M. B. R.

Indebitatus, and a *Quantum Meruit*, are two several Counts.

Assumpsit and *Trover* will not lie in one Declaration. 3 Lev. 99. 2 Lev. 101. See Title Actions.

Assumpsit and *Trover* will not lie in one Declaration.

A Promise against a Promise needs no Averment of Performance. 1 Lev. 20. 87. 2 Lev. 22.

No Averment of performing a Promise against a Promise.

But otherwise, where the Promise is conditional. See March 75. pl. 114.

Aliter where the Promise is conditional.

One Promise may be pleaded in Discharge of another before Breach, but after Breach it cannot be discharged, without a Release in Writing. 2 Mod. 44.

One Promise may, before Breach, be pleaded in Discharge of another.

Upon an *Assumpsit* it is a good Plea to say, that after the Promise the Plaintiff had discharged him of it. 2 Leon. Case 270.

That the Plaintiff did discharge the Promise, is a good Plea.

A Man may discharge an *Assumpsit* made to himself, but he cannot discharge an *Assumpsit* made by himself. Cro. Jac. 483. pl. 19.

A Man may discharge a Promise made to himself, not by himself.

Non Assumpsit is a good Plea to twenty several *Assumpsits* in one Declaration. Cro. Jac. 544. pl. 4.

Non Assumpsit is a good Plea to twenty several *Assumpsits*.

Where an *Assumpsit* to restrain Trade in such a Place, is good. See Cro. Jac. 596, 597. See Title Consideration, and Title Condition.

Where an *Assumpsit* to restrain Trade is good.

A Promise to do a Thing particularly upon Request, the Action arises upon the Request. 1 Lev. 48.

A Promise to do a Thing upon Request, the Action lies upon the Request.

Where the Promise is to pay upon Request, if the Defendant pleads *Non Assumpsit*, and doth not traverse the Request, the Request is admitted, and the Issue is only upon the *Assumpsit*.

Where the Request is not travers'd, it is admitted.

A Promise to deliver a Thing such a Day, he is bound to do it, without Request. 1 Lev. 284.

Where Request is necessary, and where not.

Where an Action is to arise upon a Condition precedent, as in Consideration that you will give me 5 l. I will deliver you my black Horse: I cannot here bring an Action for the Horse, and say, That I tender'd you the 5 l. and you refused to accept it; because it is the actual Payment and Receipt of the Money, which gives the Action. Telv. 76.

Where an Action is to arise upon a Condition precedent.

A Man upon a good Consideration promises to pay 20 l. before he began his next Journey to L. and sets forth that he began his Journey to L. such a Day, but did not say that it was his next Journey to L. and for that Reason held to be naught. Cro. Jac. 244. pl. 2. 245.

To pay Money before his next Journey to L. he says, that he began his Journey such a Day, but did not say that it was his next Journey, and naught.

If

Where there is a Promise to do a Thing, but no Time set for it.

If one upon a good Consideration doth assume or promise to do a Thing, and there is no Time set for the doing thereof, he that promised to do it, shall have a reasonable Time allowed him for the doing of it, and shall not have Liberty to do it at any Time, during his Life. For the Party promising, receiving a present Benefit by the Consideration, it is not Reason that the other Party should expect so long for the Benefit he is to receive, by performing the Promise, as the whole Life of the Party, though the Law will streighten no Man in Time for doing of any Thing.

Where the Assumpsit is the Ground of the Action: And when but Inducement.

Where an Assumpsit or Promise is the Ground of the Action brought, there it must be set forth precisely: But where it is but the Inducement to the bringing of the Action, there it is not necessary to set forth the Promise so precisely in the Declaration. For the Ground of every Action which is brought, ought to be set forth in the Plaintiff's Declaration, that the Court may judge whether there be Cause of Action or no.

Every Contract implies a mutual Promise.

Every Contract made betwixt Parties, doth in Law imply a mutual Promise that they will perform the Contract, else the Contract would be to no purpose, for want of a Remedy in Law to compel the Parties to perform it.

A Bond given in Satisfaction of an Account is a good Discharge.

An *Insimul computasset* was brought, and the Defendant pleads, that he gave a Bond in Satisfaction of the Account, and traverses that at any other Day after the Date of the Bond he accounted: And held that the Account was the Ground of the Promise, and well traversable. *Cro. Jac.* 234. pl. 4.

Accord without Execution, is now good.

Heretofore the pleading of an Accord without Execution, was not good: But now the Law being taken to be, that mutual Actions will lie upon such Agreements, such Plea shall be allowed. *Trin.* 33 *Car.* 2. *B. R.* See Title Accord,

It lies upon mutual Promises of Marriage.

The Defendant (a Woman) promised the Plaintiff, that in Consideration that he would marry her, she would marry him; then he says, That he offered himself to marry, but she refused and married the other Defendant. This Action is grounded upon mutual Promises, and adjudged that it well lies. 5 *Mod.* 411, 412.

How to assign a Breach in a Promise.

In an Action upon a mutual Promise, it is sufficient to say generally, That the Defendant hath not performed his Part, without assigning of a Breach. 3 *Lev.* 319.

A Discharge of the Promise before the Request.

A Man promises to do a Thing upon Request; a Discharge of the Promise before the Request is a good Plea, without shewing how; but after Request made, it is not. 1 *Mod.* 262.

Where

Where a Promise begins upon a Consideration, it cannot be discharged by Words, without some other Consideration. *Cro. Jac. 620.*

Where a Promise begins upon a Consideration, it can't be discharged without some other Consideration.

A Promise to pay if another did not, being made at the same Time when the Bargain was made, is not a collateral Promise for the Debt of another: But all is one entire Contract upon the Sale. *3 Lev. 363, 364.*

A Promise to pay if another did not, being made at the same Time, is not a collateral Promise for the Debt of another.

In Consideration that the Plaintiff would procure an Assignment of a Term to the Defendant, he promis'd to pay all his Charges for obtaining of it; and he avers that he did it, and it cost him 40 s. and *licet sepius requisitus* he had not paid: And moved that he had not set forth the Time or Place where he expended the 40 s. *Et non allocatur*, for it is but a Conveyance to the Action, and not traversable. *Cro. Jac. 618. pl. 3.*

The Defendant promised the Plaintiff to pay him his Charges if he would procure such a thing for him; he says that he did, and it cost 40 s.

But shews not any Time or Place of the Payment of the 40 s.

It is but a Conveyance to the Action and not traversable.

If a Man buy twenty Yards of Cloth at a Draper's Shop; the Bargain is void, unless he pay the Money presently. But if there be a Day of Payment given, here the one may bring Trover for the Goods, and the other (after the Day set for Payment is past) may bring his *Assumpsit*.

Where Goods are bought without Money, the Bargain is void, unless a Day is given.

He for whose Benefit a Promise is made, may have an Action for the Breach of this Promise, although the Promise was not made to him. For where the Law gives any Benefit to any, there it also affords a Remedy to the Party to obtain it. *2 Lev. 210, 211, 212.* Where a Promise was made to one, and the

The Man to whose Benefit a Promise is made may have an Action, tho' not made to him.

2 Lev. 210, 211, 212. Action brought by

A general *Indebitatus* will not lie for Money won at Play: But if it be laid specially, That in Consideration that one promised to pay if he won, the other promised to pay if he won, it will lie. See *Danvers's Abr. 28.* and *5 Mod. 13.* But it lies against him who holds the Wager. *Ibid.*

How an Action may be brought for Money won at Play.

Mich. 6 W. & M. against him who

Where Money was deposited upon a Wager, an *Indebitatus* for Money received to his Use well lies. *Show. Rep. 117.*

An *Indebitatus* lies for Money deposited upon a Wager.

An *Indebitatus* lies upon a Policy of Assurance. *2 Lev. 153.*

Assumpsit lies upon a Policy of Assurance.

An *Indebitatus* lies for Scavage, without an express Promise. *2 Lev. 174.*

For Scavage.

Indebitatus pro quodam Salario, held good. *2 Lev. 153.*

Pro Quodam Salario.

The Consideration to stay Proceedings in a Suit of Law for ever, or for a certain Time, is a good Consideration to ground an *Assumpsit* upon. But

Promise to stay Proceedings generally, & *paululum Tempus.*

if he promises to stay *Paululum Tempus*, it is held by some not good: For where a Promise is to stay for ever, or for a certain Time, the Party to whom the Promise is made shall be intended to receive Benefit by the Forbearance, and the other Party may be prejudiced by forbearing to sue for ever, or for a certain Time: But to forbear *Paululum Tempus*, is uncertain and inconsiderable; for it may be but for a Minute, which can neither be profitable to the one, or a Damage to the other Party. But *Cro. Car. 241. pl. 2.* held to be good; but *Latch 151, contra.*

In Consideration that he would forbear to sue J. S. upon a Bond, and says for no time, and yet held good.

In Consideration the Plaintiff would forbear to sue J. S. upon a Bond of 80 l. he promised to pay it: And he says that he forbore from the making of the Promise to such a Day, which was a Year and a half; and held a good Consideration; and that it shall be intended to be a total Forbearance, and this shall be a Discharge of the first Debt. *Cro. Jac. 683. pl. 1, 684.*

If part of the Consideration be void, and the other good, the Action will hold for the good,

If one Part of the Consideration, upon which a Promise is made, is to do a Thing against the Law, and so void; yet if another Part of the Consideration be good and lawful, the Consideration which is good, is sufficient to ground an *Assumpsit* upon: For the Consideration may be divided, and if any Part of it be good, it is sufficient to make so much of the Promise good. See *Cro. Jac. 503. pl. 14.*

Where an Action lies upon a Consideration executed and past.

An *Assumpsit* grounded upon a Consideration which was past before the Promise made, is a good *Assumpsit*, if it be alledged to be made at the Instance or Request of the Defendant, or in Case it be for a Relation or Servant. For being performed at his Instance and Request, or for his Relation or Servant, it shall be intended to be for his Benefit, and for which he is to make a Recompence to the other Party, and it is still a continuing Consideration. See Title Consideration.

Each may bring Actions upon Reciprocal Promises, although no Performance of either.

An Action may be well brought upon a Reciprocal Promise by one against the other, although he who brings the Action hath not performed it on his Side. *Dyer 30, 75, 76.*

Super se Assumpsit left out of a Declaration.

Where *Super se Assumpsit* was left out of a Declaration, and for that Reason Judgment stay'd after a Verdict. 1 *Sid. 246.* See 1 *Keble 878.* 2 *Keble 77. Raym. 123. Lev. 164.*

The Day of the *Assumpsit* laid after the Death of the Testator, and yet good: and way.

The Plaintiff in an *Assumpsit* against an Executor, lays the *Assumpsit* after the Testator's Death, which being so found, adjudged the finding to be idle and superfluous; for the Day of the *Assumpsit* is not material; and although he were dead before the Day mention'd in the Declaration, it is good enough. *Cro. Car. 130. pl. 5, 131.*

Where

Where a Man promises upon a good Consideration, to pay to J. S. 20 l. per Annum, at Michaelmas, for twenty Years. Now suppose ten of the twenty are elapsed, of which 10 l. he hath paid 5 l. and there are five Payments in Arrear, and an Action is brought for the five Years in Arrear.

Cro. Car. 241. says, That the Jury shall give Damages only for the Time past. But in Page 250, two Judges against one, that they shall give the whole in Damages: Because upon the Recovery the Promise is determined, and *transit in rem Judicatam*. But I conceive the Jury ought to give no more in Damages, than what was due at that Time of the Action brought; and after a Verdict and Judgment enter'd upon such Action, the whole Matter appearing upon Record, the Plaintiff may, upon any other Default of Payment, sue out upon that Record a *Scire Facias* against the Defendant, and set forth, That the Defendant hath not paid the so many Years Arrears due since the last Recovery (as in the Case of an Annuity) And this was the Opinion of the Lord Chief Justice Saunders; but *Quare*. See Title Annuities. See *Cro. El.* 3. *Swan's Case*.

A Recovery upon a Promise to pay 20 l. per Ann. for 20 Years, 10 of the 20 are unpaid, and a Recovery for it. A *Sci. fa.* upon this Record lies for every Year due afterwards.

See Register of Writs, 41. a. b.

How it is where Money is to be paid at several Payments, and an Action is brought for the whole before they are all out.

What the Jury may do.

The safest way is to count of Damage for the entire Debt.

Stat. of Frauds and Perjuries.
29 Ca. 2. cap. 3.

No Action to be brought to charge any Executor or Administrator, on any Marriage Agreement, or Contract for Lands, or other Agreement not to be perform'd in a Year; unless the Agreement shall be in Writing, signed by the Party, or some Party authorized by him.

and

A Man is indebted in 4 l. and promises to pay it by 5 s. a Month; and says that he had not paid it, nor any Part thereof; the Action was brought within four Months for all the Money not due, After Verdict for 4 l. and Judgment upon Error brought, it was alledged that he ought to have stayed 'till all had been due, or demanded only what was due and not the whole 4 l. But *Curia*. This is not like a Bill of Debt which is upon a Specialty, and can't be demanded 'till the entire Sum be due; but this is grounded upon a Promise which is broken by every Non-payment, and he doth not demand any Sum certain, but only Damages; and the Jury may either find the whole Sum, or only what is due. But *Note*, where such an Action is brought upon the Breach of the first Day, it is best to count of Damages for the entire Debt, for he cannot have a new Action. *Cro. Jac.* 504. pl. 16, 505. see *Cro. Car.* 241. pl. 1.

No Action shall be brought to charge an Executor or Administrator, upon any special Promise, to answer Damages out of his own Estate; or to charge the Defendant upon any special Promise to answer the Debt, Default, or Miscarriage of any other Person; or to charge any Person upon any Agreement made upon a Consideration of Marriage; or any Contract or Sale of Lands; or any Interest in or concerning them; or any Agreement not to be performed within the Space of one Year from the making: Unless the Agreement, upon which such Action shall be brought, or some Memorandum or Note thereof shall be in Writing,

and signed by the Party to be charged therewith, or some other Person by him lawfully authorized. *Stat. 29 Car. 2. cap. 3.*

A Promise broken cannot be discharged by Parol; but where it is Executory, it may.

After a Promise is broken, the Party that made the Promise cannot be discharged of it by Parol: But where the Promise is executory he may. For by the Breach, a Right of Action accrues to the Party for the Wrong done unto him, which cannot be released by Parol: But before the Breach, no Injury is done, nor any Thing due to the Party by the Promise.

Where the Law creates the Promise.

Where one becomes legally indebted to another for Goods sold, or Goods delivered, the Law creates a Promise, that he will pay this Debt: And if he do not pay it, there is a sufficient Ground for the Party to whom he is indebted to bring his Action of *Indebitatus Assumpsit* against him to recover this Debt. For where the Law creates a Duty, it doth there give a Remedy to recover it.

A Man can't declare upon a Promise to another.

The Plaintiff declares upon a Promise made to J. S. and not himself, this is naught. *Cro. El. 369. pl. 7.*

Not guilty pleaded to an *Assumpsit* how it shall be.

Tho' not guilty it not a proper Plea in an *Assumpsit*, and it may be demurr'd unto; yet because there is a Deceit alledged to charge the Defendant, Not guilty is Answer thereunto, and it is but an Issue mis-joined, aided by the Statute after a Verdict. *Cro. El. 470. pl. 29. See Title Pleas and Pleadings.*

Assumpsit lies for Money received to my Use.

Also, if a Man delivers Money to B. to my Use, I may have an Action against B. for this Money. *Danvers's Abr. 26, 27.*

Assumpsit lies for receiving of my Rent.

If one receives my Rent upon Pretence of Title, I may have an *Assumpsit* against him; for where an Account lies, an *Indebitatus* will lie. *2 Mod. 263.*

It lies for the Receipt of the Profits of an Office.

It will lie for the Receipt of the Profits of an Office, though there be no Contract. *2 Mod. 260.*

Assumpsit lies for a Fine, upon the Breach of a By-Law.

An *Indebitatus* lies for a Fine of 20*l.* forfeited for the Breach of a By-Law of a Corporation, for not serving of Steward. *2 Lev. 252.*

Where Interest will be due upon a Note to pay upon Demand.

Where there is a Note to pay Money lent on Demand, if there be an actual Demand to pay the Money, from that Time Interest will be due. *3 Anne. B. R.*

The Plaintiff's Declares for more than is really due, it is naught

An *Assumpsit* was brought to pay so much Money with Interest at 6*l.* per Cent. and he demands so much for the Interest, which is more than the Interest comes to; this is naught. *Cro. Jac. pl. 29.*

A Sum mistaken in an Action upon a Contract, is fatal.

Where an Action is brought upon a Contract, if the Plaintiff mistakes the Sum agreed upon, he fails in his Action; but if he brings it upon the Promise in Law which arises from the Debt; there, tho' he mistakes the Sum, he shall recover. *Aleyn 29.*

Not where it is upon a Promise in Law.

If the Day of an *Assumpsit* made, be in Figures in the Declaration, and not in Words at length, it is erroneous. For the Time is material, and Figures are not Words to express any Thing, and Pleadings must be in Words, and in *Latin*, by the Statute; which see in Title *Pleas and Pleadings*.

The Day in Figures in a Declaration, is naught.

In an Action brought upon a Promise, it is usual to lay the Action divers Ways, and by different Words, in the Declaration, with a *Cumque etiam*, to the Intent, that upon the Trial the Plaintiff may rest or rely upon that Way of laying of his Action that his Witnesses are best able to prove. For if any one of the Promises laid in the Declaration be proved, it is sufficient for him to recover *pro Tanto*, every Promise being a several Count.

An *Indebitatus* and *Quantum Meruit* may be laid several Ways, with a *Cumque etiam*.

If any one Count is proved, it is good.

In a *Quantum Meruit* it was said, *Cumque etiam* the Defendant in Consideration that the Plaintiff at his Request had provided for him Meat, Drink, &c. *super se assumpsit*, and doth not say the Defendant *super se assumpsit*; but it being after Verdict, the Plaintiff had Judgment. 5 *Mod.* 305, 306.

The Declaration says, *super se assumpsit*, but says not that the Defendant *super se assumpsit*; yet good.

Where an *Indebitatus* is brought for divers Goods and Merchandizes sold and delivered, there it is requisite for the Plaintiff to prove more Goods than one particular Thing sold; and also to prove a Price agreed upon, otherwise the Action will not lie. But where a *Quantum Meruit* is laid, there he needs not to prove any Price agreed upon, but only the Delivery of the Goods, and the Value of them at the Time of the Delivery. Therefore it is most secure always in an Action for Goods sold, or Work done, to lay a *Quantum Meruit*, with an *Indebitatus Assumpsit*; but if only one particular Commodity sold, there you must mention the Commodity so sold particularly in the Declaration; and not say, Goods sold.

How the Proof must be, where it is for Goods sold.

Upon a *Quantum Meruit*, how to be.

An *Insimul Computassent* lies, not of Things certain, but only of Things uncertain. Br. Title *Account* 81. And therefore it hath been a controverted Point, whether it lies for Rent only? And Judgments have been both Ways; which see in *Danv. fol. 31. pl. 11*. But I take it, that where it is Part for Rent, and Part for other Things, it well lies. See *Style's Rep.* 131, 283, 473. 2 *Lev.* 110, 111.

Where an *Insimul Computassent* lies, and where not.

Insimul Computassent for Arrears of Rent, and about Payment of a Legacy due to the Plaintiff; and it was found that 300 *l.* was due, and in Consideration thereof the Defendant promised to pay it moved, that it doth not appear that the Defendant was Executor, nor how chargeable for the Legacy, nor for the Payment of the Rent. *Curia*. It shall be intended that he was chargeable, otherwise he would not have promised Payment; and the accounting together, and promising Payment, was a sufficient Cause of Action. *Cro. Jac.* 603. *pl. 27*.

An *Insimul Computassent* lies for Rent, and for a Legacy.

such a Day: And was Executor, nor

It shall be intended that he was chargeable.

For the accounting together, and promising Payment, is a sufficient Cause of Action.

For what it lies, and how to declare upon it.

An *Infimul Computassent* for all Debts, Reckonings and Demands; and the Defendant was found in Arrear so much, which he promised to pay: And moved, that there should have been specified the Particulars, as for Wares sold, or otherwise. But *Curia contra*. For all the Matters in *pede compoti* are reduced to a certain Sum, wherein he stands indebted, which is a sufficient Ground to maintain an Action. *Cro. Car. 115. pl. 8: 116.*

The common Declaration upon an *Infimul Computassent*.

Note, At this Day the common Declaration upon an *Infimul Computassent* is to say, that the Plaintiff and Defendant such a Day, Year and Place, *infimul inter se computaverunt de diversis denariorum summis per ipsum* the Defendant *eidem* the Plaintiff *præantea ibidem debet. & insolut. existen. & super compoto illo idem*, the Defendant *adtunc & ibidem inventus fuit in arrearagiis erga eundem* the Plaintiff in so much, *prædictoque defendente sic in arrearagiis invent. existen. adtunc & ibidem in consideratione inde super se assumpsit, &c.*

How the Plaintiff must lay his Declaration.

The Plaintiff must, in his Declaration, lay the very Day of the Account, and the very Sum agreed upon by both Parties to be due, otherwise the Plaintiff will be nonsuited.

Where one promises for another.

Two Persons go to an Inn-keeper; one hires an Horse, and the other promises that if the Inn-keeper will deliver him to his Friend, he will see it forth coming. This, as a Promise to make good the Default of another, is not good without a Note in Writing; yet the Defendant is chargeable here upon the Special Bailment, *Quod Nota*, and so good without a Note. 3 *Annæ B. R.*

Not good without a Note in Writing.

But chargeable upon the Special Bailment.

Upon a Sale of Goods of the Value of 10 l. or more, the Buyer must accept Part of the Goods, or pay Earnest.

Also upon a Contract for the Sale of Goods of the Price of 10 l. or upwards, no Action will lie, unless the Buyer accept part of the Goods sold, or give something in Earnest to bind the Bargain, or some Note or *Memorandum* in Writing be made and signed by the Parties to be charged with the said Contract, or their Agents thereto lawfully authorized. *Stat. 29 Car. 2. cap. 3.*

29 *Car. 2. cap. 3.*

Need not mention any Note in Writing in a Declaration upon a Collateral Promise, but must produce it in Evidence.

In a Declaration upon a Collateral *Assumpsit* for another, it is not necessary to make mention of any Note in Writing, but it is sufficient to produce it in Evidence. *Raym. 451.* but if such

Agreement be pleaded in Bar, he must plead the Agreement to be by Writing. *Ibid.*

Assumpsit lies for an Executor for a Copyhold Fine for Admission.

If a Lord of a Manor assesses a Fine upon a Copyholder for his Admission, and dies, his Executor, upon the *Assumpsit* in Law, may bring an Action for it; for it doth not depend upon the Inheritance, but is *quasi* a Fruit fallen. 3 *Lev. 261.*

A Promise to enter into a Bond, and says not into what Sum.

If there be an Agreement to enter into a Bond for the Performance of a Thing of a certain Value, with-

without naming of what Sum, it shall be intended according to the Value. 1 Sid. 270. *Danv. Abr.* 41.

A Promise to enter into a Bond with a reasonable Penalty, and it is not agreed what it shall be, and yet adjudged good. *Cro. Jac.* 652. pl. 21.

To enter into a Bond, and says not what Sum.

The Defendant pleads that he gave a Bond in Discharge of the *Assumpsit*; and it was demurred to, for that it amounted but to the general Issue; for the Debt being extinguished by the Bond, the Defendant ought to have pleaded *Non Assumpsit*, and to have given the Bond in Evidence, to which the Court inclined. 5 *Mod.* 314.

Where a Bond is given in Discharge of an *Assumpsit*, *Non Assumpsit* is a good Plea.

Where a Man promises to pay so much Money when such Businesses were done for the Defendant; if after Part done the Defendant countermands it, the Plaintiff shall have an Action for the whole; and upon the Trial the Jury ought to give as much in Damages, as the Business done deserves. *Danv. Abr.* 67. See 3 *Lev.* 244.

What Damages shall be given where the Defendant countermands the Promise, when but Part is done.

If A. promises to pay for all the Iron made at such a Furnace, *Secundum Ratam* 40 s. per Tun, he must pay for odd Pounds proportionably. *Yelv.* 133, 134. *Danv. Abr.* 68.

Where, upon a Promise to pay so much per Tun for all the Commodity, he must also pay proportionably for odd Pounds.

An *Indebitatus* for 20 l. without saying what is due, is naught. 10 *Rep.* 77. a. *Cro. Car.* 31. pl. 2. *Cro. Jac.* 207. But in an *Assumpsit* the Plaintiff declares, That whereas the Defendant was indebted to him in 20 l. in Consideration that he had given him Time to such a Day to pay it, he promised to pay, &c. This is good, although not shewn for what the Defendant was indebted; for the Debt here was not in Question, as if it had been an ordinary *Assumpsit*, where the Debt is the only Consideration of the Promise; for there it must appear to the Court; but here the Day given is the express Consideration; and though it be true that there must also be a Debt, yet this is allowed in the Promise, being actual, and also found by Implication in the Verdict. [Note, It ought to be proved at the Tryal.] *Hob.* 18. 5. See *Cro. Jac.* 397, 548, 584. What Reason had the Defendant to promise, if no Debt due?

Indebitatus for 20 l. not saying for what due, where not good, and where good.

In an Action upon an *Assumpsit* 'tis sufficient to say, That whereas the Defendant was indebted to the Plaintiff in 20 l. he promised to pay it; and without saying how, or in what Manner the Debt accrued, it is good; because the Action is not merely founded upon the Debt, but upon the Promise; and the Debt is but Inducement. *Poph.* 31.

Indebitatus for 20 l. and says not for what due, is good; and upon a Special Promise to pay it, and why.

The Debt is but Inducement.

Where a Promise is, that if the Plaintiff would deliver such Goods to A. B. he promised to pay so much as they were worth, but did not say that he would pay to the Plaintiff, but only that he would pay; but yet adjudged good. *Cro. Car.* 77. pl. 8.

A Promise to pay, and says not to whom, shall be intended to be to the Plaintiff.

For the general Learning concerning Actions on the Case, Contracts and *Assumpsits*, see *Shepherd's Actions upon the Case for Deeds*, viz. Contracts, *Assumpsits*, Deceits, &c. But more especially see *Gen. Abridgment*, Title *Actions*, from Fol. 1. to Fol. 46. and Title *Actions upon Assumpsit*, from Fol. 46. to Fol. 80.

Attachment.

See { Award.
Contempt.

Attachment, what.

There is a Writ of Attachment, which is granted by the Court for any Offence or Contempt done to the Court, or against any Rule of Court; and when the Party appears upon the Attachment (which must be on the Crown-Office side) he must upon his Oath answer Interrogatories to be there exhibited against him; and if he be reported by the Master to be in Contempt, he is finable by the Court.

There is also a Writ of Attachment at the Suit of an Attorney of the Court, which is in the Nature of a Capias, to bring a Defendant into Court.

There is also a Foreign Attachment according to the Custom of London.

Attachment denied for Breach of a Rule of Court for Performance of an Award. But granted for not obeying an Award by Rule of Affizes.

An Attachment was denied to be granted for the Breach of a Rule of Court, had by Consent, for the Performance of an Award; for this Court will not try such Issue (as Award or no Award) by Affidavits. *Raym.* 35. *Vide* 1 *Keb.* 130. & 138. & 2 *Keb.* 22. 575. *Sed vide* 2 *Keb.* 585. where an Attachment was granted for not obeying an Award made by Rule of Affizes, which was afterwards made a Rule of this Court. *Sed vide eund.* 645. *Pl.* 78. & 3 *Keb.* 446.

Also if a Rule of Court be made by Consent of both Parties, an Attachment lies for Disobedience.

If a Rule of Court be made betwixt the Plaintiff and Defendant by their Consent, although the Court would not have made this Rule without such Consent, yet if either Party will not obey this Rule, the Court will grant an Attachment against him that obeys it not, if the other Party desire it; for this Disobedience to the Rule is a trifling with the Court, and a slighting and Contempt of their Authority, to which by their Consent they had formerly

Attachment.

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merly submitted. In a Case betwixt *Middleton* Plaintiff, and Sir *John Lenthal* Defendant, upon a Rule made by Consent, that Sir *John Lenthal* should seal a Release of Errors upon a Judgment. *Jan. 27. Hill. 1655. B. S.*

An Attachment may be granted against one that stands indicted of common Barretry, and will not plead to the Indictment, (*Trin. 13 Car. 1. B. R.*) for his Contempt to the Court.

Also against a Man who refuses to plead to an Indictment of Common Barretry.

This Court will not grant an Attachment against one for disobeying an Order made by Justices of Assize, unless the same be made an Order of this Court. *Mich. 23 Car. 1. B. R.* For that is no Contempt to this Court, but to the Judge that made the Order.

But not against a Man for disobeying an Order of Justices of Assize.

An Attachment may be granted against the Party that hath agreed to a Special Verdict, and doth refuse to pay his Part of the Costs expended upon the Trial, (*Mich. 23 Car. 1. B. R.*) or for refusing to bring it, when agreed upon, into Court. (*Hill. 1649. 26 Januarii, Pasch. 23 Car. 2. B. R.*) For every of these is a Contempt to the Court.

For Refusal to pay Costs after Agreement to special Verdict.

An Attachment is not to be granted against an Attorney for refusing to obey an Order made by a Judge of this Court in his Chamber; for this is no Contempt to the Court, because such an Order is not to be accounted for a Rule of Court, (*Mich. 23 Car. 1. B. R.*) except it be entred; for then it is a Rule of Court, to which the Court expects Obedience to be given.

Not against an Attorney for Disobedience to an Order of a Judge in his Chamber.

An Attachment was granted against Commissioners of Sewers, for proceeding after *Certiorari* directed. *Raym. 186.*

Against Commissioners of Sewers.

An Attachment may be granted against Justices of the Peace, for proceeding upon an Indictment after a *Certiorari* out of this Court is delivered unto them, to remove the Indictment hither. (*Hill. 23 Car. 1. B. R.*) This hath been often done, and justly; for the Authority of this Court is not to be slighted by inferior Authorities. *Vide Style Rep. 359. Staples's Case.* The Rule was, That *Staples* be examined upon Interrogatories, and make a Return of the *Certiorari* on Monday next, and that he restore the Fine set upon the Party. *Mich. 1652. B. S.*

Against Justices of Peace for proceeding after *Certiorari*.

An Attachment was granted against one of the Parties, to a Suit in this Court, for perswading the Jurors returned to try the Issue in question not to appear at the Day, upon pretence that he had obtained an Injunction out of Chancery to stay the Proceedings in the Suit. (*25 Oct. 1650. B. S.*) For thereby he laboured to obstruct the Proceedings of the Court by Subtily and Falshood, which are odious in Law.

Against one of the Parties for perswading Jurors not to appear.

If an Attorney undertake to appear for one, and afterwards refuseth to do it, the Court will grant an Attachment against him for his foul Practice; (*Pasch. 23 Car. 1. B. R.*) in trifling with the Court, and abusing the Client.

Against an Attorney for refusing to appear for one after Promise to appear.

Attachment.

Not for disobeying a Rule of Court, unless there be Proof of Personal Notice.

Where Defendant was order'd to shew Cause why Attachment should not be granted.

it was putting the Party out of Possession, and therefore ordered, that the Defendant should shew Cause, why an Attachment should not be granted. *Style Rep. 227. vide Eund. 318.*

Where Attachment lies for abusing the Process of the Court.

lies against him for abusing the Process of this Court, and making it a Stale to another Intent. 27 Nov. 1650. *B. Sup. Style Rep. 239. int. Brian and Stone.*

Not against a Corporation, except granted *Nisi*.

For arresting a Man after a Verdict against him, in Order to have him in Custody when Judgment was enter'd.

faid, "Take an Attachment, if he will not discharge the Party, or "else let him shew Cause to Morrow why he will not discharge him. *Idem 211, 212.*

For issuing Execution on a Judgment after Error brought.

For refusing to take Bail upon an Arrest.

but carried him into another Liberty to charge him with an Action there; and the Court being moved for an Attachment, for abusing the Process of this Court, it was granted *nisi*, &c. *Style Rep. 343.*

Where granted *Nisi*.

Baron; the Court awarded a Prohibition and an Attachment, unless Cause shewn. 1 *Keb. 260.*

For refusing to pay Officers Fees after the Business is dispatch'd, but not before.

This Court will make no Rule for an Officer thereof, to be paid his Fees, before he have dispatch'd his Client's Business; but if the Client will not pay him his Fees after he hath done his Business, the Court will grant an Attachment against him. By *Rolle Ch. Just.* For although the Officer may have an Action to recover his

The Court will not grant an Attachment against one for disobeying a Rule of the Court, except it be proved that Personal Notice was given to him of the Rule, (*Trin. 24 Car. B. R.*) viz. where personal Notice is requisite.

A Rule of Court was made, *int. Smith versus the Earl of Dorset*, for the Plaintiff to have Possession, and the Plaintiff's Cattle being driven off from the Land, the Court upon Motion conceived

it was putting the Party out of Possession, and therefore ordered, that the Defendant should shew Cause, why an Attachment should not be granted. *Style Rep. 227. vide Eund. 318.*

If one arrest another upon a *Latitat*, and then convey him to a Corporation, and arrests him again there, and proceeds not against him upon the *Latitat*, but in the Corporation, an Attachment lies against him for abusing the Process of this Court, and making it a Stale to another Intent. 27 Nov. 1650. *B. Sup. Style Rep. 239. int. Brian and Stone.*

An Attachment doth not lie against a Corporation; but if it be granted *nisi*, and the Corporation will not restore a Member, the Court will grant a Restitution. *Raym. 152. vide 2 Keb. 1.*

In a Case where the Court was inform'd upon an Affidavit, that one *Lamb* had arrested *Duff*, after a Verdict found for *Lamb* against *Duff*, to the intent that he might have him in Custody, when the Judgment was entred against him, the Court

See Attachment against the Mayor of *Newberry*, for issuing out Execution on a Judgment given there after a Writ of Error brought and allowed there, *Style Rep. 321.*

One took a *Latitat* out of this Court, and arrested the Party, and refused to take Bail of him, but carried him into another Liberty to charge him with an Action there; and the Court being moved for an Attachment, for abusing the Process of this Court, it was granted *nisi*, &c. *Style Rep. 343.*

Upon an Affidavit, that the Debt was above 40*s.* and divided into several Actions in a Court-Baron; the Court awarded a Prohibition and an Attachment, unless Cause shewn. 1 *Keb. 260.*

This Court will make no Rule for an Officer thereof, to be paid his Fees, before he have dispatch'd his Client's Business; but if the Client will not pay him his Fees after he hath done his Business, the Court will grant an Attachment against him. By *Rolle Ch. Just.* For although the Officer may have an Action to recover his

Attachment.

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his Fees, yet this is not Satisfaction for disobeying the Orders of the Court, which is, for every Client to pay the known Fees, which are not due till the Client's Business is dispatched.

An Attachment lies against the Parties that will not pay such Costs as are taxed by the Master of the Office of this Court. 21 Car. 1. B. R. For it is the taxing of the Court, though done by the Officer, and the Refusal to pay them, is a Contempt to the Court, and not to the Officer.

Lies for refusing to pay Costs taxed by a Master.

An Attachment was granted against the Defendant, for not confessing Lease, Entry and Ouster in Ejectment. 1 Keb. 502. pl. 61.

For not confessing Lease, Entry and Ouster.

An Attachment was granted against one for proceeding in an inferior Court, notwithstanding that a *Habeas Corpus* issued out of this Court, and thereupon a *Superfedeas* also was granted to stay the Proceedings there, and an Amercement set upon the Party that was to return the *Habeas Corpus* for not making a Return of it. 21 Car. B. R. For where the Authority of this Court doth interpose, there all inferior Authorities are to cease to act, and to be assistant to this Court in what they are required in the Prosecution of the Cause here.

Granted for proceeding in an inferior Court, after *Hab. Corp.* issued out of B. R.

In some Cases the Court doth not use to grant an Attachment against Persons for Misdemeanors done against the Court, but will send a Tipstaff of the Court to bring in the Offender, viz. If the Party live in or near the Town. 2 Car. 1. B. R. For this is the readier Way to bring in the Party.

Where the Court will not grant an Attachment for Misdemeanors.

An Attachment was granted against a Sheriff, for refusing to bring Moneys into the Court which he had levied upon an Execution, and was order'd by the Court to bring it in. Mich. 22 Car. B. R. For the Sheriff is an Officer of this Court.

Against a Sheriff for refusing to bring Money into Court.

The Court was moved for an Attachment against the Sheriff of Chester, who return'd *qd' fieri fecit* upon a *Testatum Fieri fac'*, but that they remain'd in his Hands *pro defectu emptorum*. Hereupon a *Venditioni exponas* issued, of which he made no Return, nor any Satisfaction to the Plaintiff, and for that an Attachment was granted. Raym. 171.

Also for not making Return to a *Venditioni exponas*.

Generally an Attachment doth lie for any Contempt done against the Court. Hill. 22 Car. 1. B. R. For the Court will uphold its Authority.

Does lie for Contempt against the Court.

An Attachment was granted against one for taking out of an Execution without any Judgment to warrant it. Hill. 22 Car. 1. B. R. This was foul Practice, and an Usurpation upon the Authority of the Court.

Also for taking out Execution without a Judgment.

An Attachment doth lie by the Rule of this Court, upon Motion, for not making a Return of a *Hab. corpus* upon a *Pluries Hab. corpus* issued forth. Hill. 22 Car. 1. B. R. For this appears to be a high Contempt in refusing so often to obey the Process of this Court.

Also for not making a Return of a *Hab. Corp.* after a *Pluries Hab. Corp.* issued.

An

Lies for several Arrests for the same Cause.

An Attachment was granted against one for arresting one three several Times upon *Latitats* taken out of this Court, for one and the same Cause, and not proceeding against the Party arrested upon any of them. *Hill. 22 Car. 1. B. R.* For this was to use the Authority of this Court merely for vexation.

Lies against a Bailiff for executing a Process against a Rule of Court.

An Attachment was granted against a Bailiff for executing of a Process of this Court against the Rule of the Court, (*Pasch. 23 Car. 1.*) B. R. having notice of the Rule. For this appeared a wilful Contempt.

Likewise for not returning a *Cepi Corpus* after an Arrest and Sureties taken.

An Attachment was granted by this Court against a Bailiff of a Liberty, who on a *Latitat* had arrested the Defendant and taken Sureties, and return'd a *Cepi corpus*, but never brought in the Body, but combining with the Defendant let him go at Liberty, &c. *Raym. 193.*

Also for driving a Distress into a Franchise to prevent a Replevin.

Granted against a Bailiff for driving a Distress into a Franchise, and would not suffer Replevin of them. *1 Keb. 804. pl. 72.*

Where it lies against Witnesses.

If one be indicted for Perjury, and the Witnesses to prove the Perjury be served with Process to appear at the Trial, and will not appear, whereby the Trial goes for the Defendant; the Court will grant a new Trial, and an Attachment against the Witnesses. In the Case of *Howel Gwin, Hill. 1555, B. S.*

Granted *nisi* against the Parties that arrested a Witness attending the Court.

The Court was moved to discharge one *Collins*, that was arrested as he was attending the Court, to give Testimony as a Witness in a Cause, and for an Attachment against the Parties that did arrest him. *Rolle* Chief Justice said, Take a *Superedeas*, and let the Parties shew Cause why an Attachment shall not be granted against them that arrested him. *Style Rep. 365.*

Lies not against Witnesses, tho' the King be Party.

An Attachment lieth not against Witnesses, tho' the King be a Party. *1 Keb. 198.*

Cannot be granted against the Marshal of the King's Bench.

An Attachment cannot be granted against the Marshal of the King's Bench; for this would be to let all the Prisoners escape; but a Fine may be set upon him by the Court for Misdemeanors in his Office. *Hill. 1655.* in a Cause against *Culpeper*, a Prisoner with Sir *J. Lenthal*.

The Court will not grant an Attachment upon an Award, without Service of a Copy of it, and Demand of the Money.

9 & 10. III. 3. cap. 15.

The Court will not grant an Attachment for the Non-performance of an Award, made by Rule of Court, pursuant to the new Statute of the 9 and 10 *Will. tertii cap. 15.* without Personal Service, with a Copy of the Award, and a Demand of the Money awarded, by the Person who is to have the Money, or some other Person who hath a good Authority for him to receive it, and he then neglects or refuses Payment of it.

Where

Where a Juror is withdrawn, and the Matter referred to the Arbitration of some of the Jurors, and they make an Award, the Court will not grant an Attachment for the Non-performance of this Award, until the Party, who is awarded to pay the Money, is served with the Award, and the Money demanded of him by the other Party, or some Person having Authority from him; and he then refuses or neglects paying of it: Of all which an Affidavit must be made, and produced in Court: But an Action will lie upon the Award, upon the Delivery of it, without demanding of the Money. Hill. 8. W. Regis B. R.

Where it lies for the Non-performance of an Award by some of the Jury.

Note, Before an Attachment for Non-payment of Costs upon a Rule of Court will be granted, an Affidavit in Writing must be made of serving the Party personally, and demanding of the Money taxed upon the Rule, by the Person to whom payable, or some Person who had Authority from him to receive the same for him.

How to proceed to procure an Attachment.

Regularly, upon a *Mandamus*, there must be an *Alias* and *Pluries* before you can have an Attachment for the not making of a Return. Pasch. 12. W. B. R. But the Court may, if they think fit, order the Return to be made sooner.

No Attachment until a *Pluries* *Mandamus*.

An Attachment was granted against two Bailiffs, for arresting the Tenants of one Glover upon a *Latitat* of this Court upon the Lord's Day, when they might as easily have done it upon any other Day of the Week. 23 Car. B. R. The Common Law is tender of keeping the Lord's Day. But now there is an Act made, 29 Car. 2. cap. 7. Intituled, *An Act for the better Observation of the Lord's Day, commonly call'd Sunday*, which makes all Arrests upon the Lord's Day void. See Title *Sunday*.

It was granted against two Bailiffs, for arresting upon the Lord's Day.

But since, the Act, 29 Car. 2. cap. 7. makes all those Arrests void.

A Debt which accrues by matter of Record, can not be attached by the Custom of London. 1 Leon. 293 Leon. Case 333.

A Debt upon a Record is not attachable in London.

A Foreign Attachment in London cannot be pleaded after Imparance. 3 Leon. Case 316.

Can't plead a Foreign Attachment after Imparance.

A Debt not due is not attachable in London by Foreign Attachment. 3 Leon. Case 224.

A Debt not due, is not attachable.

The Defendant pleaded a Debt due in London, and a Foreign Attachment and Judgment; the Plaintiff replies, that he was not indebted to the Defendant in that or any other Sum. This upon a Demurrer was held a good Replication; for whether he was indebted in London, or not, was issuable. Cro. Eliz. 598. pl. 4.

Whether indebted in London, or no, is traversable.

A Foreign Attachment cannot be where a Suit is depending in any of the Courts of Westminster: For whilst the Suit is depending in any of the King's Courts at Westminster, it is *quasi in Custodia legis*, and cannot be medled with by any other Court. Cro. El. 691. pl. 28.

A Foreign Attachment can't be where a Suit is commenc'd in Westminster Hall.

Nor of Money in the
Garnisher's Hands before
Administration granted.

A Creditor attaches Money in London in the
Garnisher's Hands before Letters of Administration
taken out, it is naught. 5 Mod. 75, 76. and 92,
93, 94, 95.

Attainder.

Discent.
See Forfeiture.
Trust.

Attainders, the several Sorts.

There be two Sorts of Attainders; the one
is after Appearance, and that in three
Manners, by Confession, by Battel, or
by Verdict; the other by being outlawed,
which is an Attainder in Law. For the Forfeitures in these Cases, see
Title Forfeitures.

The Son purchaseth,
and hath a Sister; the
Son dies without Issue;
the Sister shall inherit,
though the Father was
attainted of Treason.

A. hath Issue a Son and Daughter; the Son
purchaseth Lands in Fee; A. is attainted of Treason,
the Son dies without Issue, the Daughter shall in-
herit, because there is not any mention made of A.
the Father, in the Conveyance. *Latch 73. See
Noy 158.*

One Son shall inherit
to the other, though the
Father be attainted; and
why.

A Man is attainted; his eldest Son purchaseth
Lands, and dies without Issue; the second Son
shall inherit as Heir to him, notwithstanding the
Attainder of the Father, because the Blood is not
corrupted between the Sons. 4 Leon. Case 21. Cro.
Jac. 539. pl. 7.

A Person attainted
cannot have Executors.

A Person attainted cannot make Executors. Cro.
Eliz. 225. pl. 10. because he can have no Goods.

A Man attainted of
Felony shall answer to a
Subject's Action.

A Man attainted of Felony shall answer the Suit
of a Subject notwithstanding his Attainder. Cro. El.
516. pl. 41.

The Attainder of the
Father, who never had
the Land in Possession or
Use, shall not prejudice
the Son.

Grandfather, Father and Son; the Grandfather
Tenant in Tail, the Father attainted of Treason,
and dies in the Life of the Grandfather; then the
Grandfather dies: this Land shall descend to the
Son; for the Father never had the Land in Posses-

sion or Use, in which two Cases 26 H. 8. gives the Forfeiture only.
But now by the Statute of 33 H. 8. in all the said Cases, the Estate is
vested upon the King by the Attainder. 3 Co. 10. b.

Attaint.

Attaint is a Writ that lies where a false Verdict in a Court of Record, upon an Issue joined by the Parties, is given; and if the Jury are convicted, they are stained with Perjury, and become infamous for ever: For the Judgment at the Common Law is, 1. Quod amittant liberam legem imperpetuum. 2. Quod forisfaciant bona & catalla sua. 3. Quod terræ & tenementa sua in manus Dom' Regis capiantur. 4. Quod Uxores & liberi extra domus suas eicerentur. 5. Quod Domus suæ prosterantur. 6. Quod Arbores suæ extirpentur. 7. Quod prata sua arentur. 8. Quod corpora sua carceri mancipentur. So odious is Perjury in the Eye of the Law. But now by a Statute made 23 H. 8. cap. 3. the Severity of the Common Law is mitigated, where a Perjury is attainted; and now there is a pecuniary Penalty appointed thereby, and also Fine and Ransom at the Discretion of the Court. See Co. Litt. 294. b.

What an Attaint is.

The Judgment in it.

Altered by the Statute of 23 H. 8. cap. 3.

An Attaint lies against a Jury that give their Verdict contrary to the Evidence that is given them, (*Pasch. 23 Car. 1. B. R.*) by the Statute of 23 H. 8.

Lies against a Jury, who give a Verdict contrary to Evidence by Stat. 23 H. 8.

A Non suit in an Attaint is peremptory.

Non suit in Attaint, peremptory.

If the Party for whom the Jury find the false Oath die before the Writ of Attaint brought, the Action is gone. *Dyer 5. a.* But if he die pending the Writ, there it is not gone. *Dyer 129. pl. 65.* See the Statute of 23 H. 8. cap. 3. and *Gen. Abridg-ment Title Attaint*, from Fol. 593. to 601.

If the Party for whom the Jury find, die before Writ of Attaint brought, the Action is gone: Otherwise, if pending the Writ.

An Attaint will lie as well in a real as a personal Action; and the Poor, by reason of their Poverty, upon Oath made thereof, shall have it without Fine, and all others at an easie Fine.

It lies as well in real as personal Actions.

Attaints always descend to such Person to whom the Land should descend. 1 *Leon. Case 346.*

43 E. 3. cap. 7.

Who shall have an Attaint.

Attaints must be sued in the Courts of King's Bench or Common Pleas, and what Processes are to be in Attaints, by 23 H. 8. cap. 3. But a *Nisi prius* may be granted.

Where Attaints must be sued 23 H. 8. cap. 3. *Nisi prius.*

etc

What Process the Statute gives in Attaint.
23 H. 8. cap. 3.

No new Attaint after a Nonsuit.
23 H. 8. cap. 3.

If the Judge directs them wrong, they shall not be attainted.

Lies not upon an Inquest of Office.

Lies not when the Jury find for the King.

But it lies upon a *Qui tam*.

The Record must be in Court before any Proceedings.

The Defendant shall have no Costs upon a Verdict in Attaint.

Plaintiffs in Attaints shall recover Costs and Damages.

11 H. 7. cap. 4.

Where it lies not.

How it must be where the Judge declares the Law erroneously.

ever, upon the Attaint, the Judgment is to be reversed; for a Man shall not lose his Right by a Judge's Mistake of the Law. *Vaugh.* 145. *Br. Attaint* 82.

What Pleas the Petty Jury may plead.

hath been nonsuited, discontinued, or had Judgment against the Petty Jury. *Keil* 130. a. See 23 H. 2. cap. 3.

What Evidence must be given upon it.

Dyer 53. pl. 14. But the Defendant may give more Evidence in Affirmance of the first Verdict; but the Plaintiff may answer it, and disprove it if he can, but he cannot give other Evidence. *Dyer* 212. pl. 34.

If a Man recovers in an Attaint upon a Verdict in Action, in which he lost his Land, he shall have Restitution. *Br. Attaint* 84. So also in Case of Damages. See *Danv.* 601.

The Process given by the Statute of 23 H. 8. c. 3. against the Petty Jury, Grand Jury, and the Party, is Summons, Resummons and Distress infinite. 1 *Leon. Case* 377. *Fol.* 279.

There can be no new Attaint after a Nonsuit, neither by the Common Law nor Statute of 23 H. 8. cap. 3. *Cro. Eliz.* 376. pl. 26.

If the Judge delivers the Law to the Petty Jury, and they find accordingly; though he mistakes the Law, the Jury shall not be attainted. *Cro. El.* 309. pl. 18.

No Attaint lies upon an Inquest of Office. *Fitzh. Attaint* 13. 2 H. 4. 2. b

Where the King is sole Party against the Subject, and the Jury find for the King, no Attaint lies. But it is otherwise where the Suit is *tam pro Domino Rege quam pro seipso*. Ib. & *Cro. El.* 309.

If the Record is not in the Court where the Attaint is brought, it must be removed into it before there can be any Proceedings; and how it is to be done, see *Cro. El.* 371, 372. 1 *Rol. Abr.* 394. a.

The Plaintiff in Trespass brought an Attaint, and the Verdict was affirmed; the Defendant shall have only the Costs upon the first Verdict, not upon the Attaint. *Cro. Car.* 542. pl. 6.

Plaintiffs in Attaints shall recover their Costs and Damages.

An Attaint lies not for that which was not given in Evidence. *Br. Attaint* 82.

If the Judge declares the Law to the Jury erroneously, and they find accordingly; though this may excuse them from the Forfeitures, yet however, upon the Attaint, the Judgment is to be reversed; for a Man shall not lose his Right by a Judge's Mistake of the Law. *Vaugh.* 145.

After the Plaintiff hath assigned the false Oath, the Petty Jury shall have no Answer, but only that they made a true Oath; unless the Plaintiff hath been nonsuited, discontinued, or had Judgment against the Petty Jury.

In an Attaint more Evidence cannot be given than was given to the first Jury; for no Default was in the first Jury, if it was not shewn to them.

But the Defendant may give more Evidence in Affirmance of the first Verdict; but the Plaintiff may answer it, and disprove it if he can, but he cannot give other Evidence.

If a Man recovers in an Attaint upon a Verdict in Action, in which he lost his Land, he shall have Restitution.

See *Danv.* 601.

Attaint.

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In an Attaint the Grand Jury may find a Special Verdict, if they will. *Cro. El. 350. pl. 1. 351.*

The Grand Jury may find the Matter specially.

The Oath to the Grand Jury in an Attaint ought to be general, to try the Issue in the Attaint. *Cro. El. 351.*

How the Oath of the Grand Jury is to be.

Attorney.

Appearance.

Bail.

Guardian.

Infant.

Rules.

Warrant of Attorney.

See

Attorneys are such Persons as take upon them the Charge of the Business of other Men, by whom they are retained. Terms of the Law. 5. b.

What Attorneys are.

Attorneys ought to be of some of the Inns of Court, or Inns of Chancery; and not to lodge in Inns and Ale-houses, or in private Places; as was said by Rolle Chief Justice, Hill 1649. B. S. For it is not for the Honour of the Law, nor for their Credit, to lodge in obscure Places, but to live in Societies where Order and Government are; and that were this observed, much foul Practice would be hindred. And much to that purpose is the Order made 3 Anna by all the Judges of the King's Bench and Common Pleas, and also by the Barons of the Exchequer; which Order is as follows:

*De Termino Sancti Michaelis, Anno Regni Dominae
Annæ nunc Reginae, Angliæ, &c. Tertio.*

Whereas divers Complaints have been made to us, that many Attorneys and Clerks of the several Courts at Westminster are not admitted of the Inns of Court or Chancery, according to antient Course and Usage, by which they might be resorted to, and Business of Law better managed, to the greater Ease of the Queen's Subjects. The Neglect whereof is to the great Detriment

All Attorneys and Practisers to be admitted of some Inn of Court or Chancery.

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" and Decay of the Societies of the Law, and divers Inconveniencies
 " do thereupon daily happen. For prevention whereof, and to esta-
 " blish a Remedy for the future,

Where to be admitted. " It is ordered by the Judges of the several
 " Courts of Queen's Bench and Common Pleas,

" and the Barons of the Court of Exchequer at *Westminster*, That all
 " Attorneys and Clerks of the said Courts, not already admitted into
 " one of the Inns of Court or Chancery, shall procure themselves to
 " be admitted into one of the said Inns of Court (if those Honourable
 " Societies shall please to admit them) or into one of the Inns of
 " Chancery, before the end of *Trinity-Term*, now next ensuing, and
 " take Chambers there, if conveniently they may be had; else that
 " they take Lodgings in some convenient Place near the said Inns,
 " and leave Notice in Writing with the Butler or Porter of such Inn,

What Attorneys are
 excepted out of this Rule.

" whereof they are admitted, where their Lodg-
 " ings or Habitations are; (except such Persons
 " who are or shall be hereafter Inhabitants or House-
 " keepers in *London, Westminster, Southwark*, or the Suburbs thereof,
 " and Liberty of the Tower of *London*, and *St. Katherine's* there;) and
 " such who are Sworn Attorneys of any Courts within the said Cities,
 " Towns and Liberties.

No Person to be sworn
 until admitted, and pro-
 ducing a Certificate
 thereof.

" And it is farther hereby ordered, That for
 " the future no Person whatsoever shall be sworn
 " an Attorney, or admitted, or entred a Clerk of
 " any of the said Courts, or Offices thereunto be-
 " longing, (except the Persons before excepted)
 " unless first admitted of one of the Inns aforesaid, and bring and
 " produce at the time of his being sworn an Attorney, or admitted,
 " or entred a Clerk, as aforesaid; a Certificate under the Hand of the
 " Treasurer, or Principal of the Inn whereof he is admitted, which
 " they are respectively to give, without being paid for the same, testi-
 " fying such his Admission; which Certificate every Attorney or
 " Clerk so sworn, of the said Court of Queen's Bench, shall deliver
 " to the Secondary of the said Court. And every Attorney or Clerk
 " so sworn of the said Court of Common Pleas, shall deliver to the
 " Clerks of the Warrants of the said Court. And every Clerk of the
 " said Court so admitted or entred, shall deliver to the respective Pro-

Concerning Attorneys
 and Clerks in the Ex-
 chequer-Office.

" thonotaries of whose Office he shall be admitted.
 " And every Attorney so sworn, of the said Court
 " of Exchequer, or Clerks seated in any of the Of-
 " fices belonging to the said Court, shall deliver to
 " the Queen's Remembrancer, or his Deputy for the Time being, to
 " be by the said respective Officers filed, before the Name of such At-
 " torney, shall be entred into the Roll of Attorneys, or such Clerk
 " admitted, entred or seated, as aforesaid. Unto which File of Cer-
 " tificates the respective Treasurers and Principals of the said Inns of
 " Court and Chancery shall or may from Time to Time resort, as
 " they shall see Cause, without paying any thing for the same.

" And

Attorney.

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" And it is farther ordered, That no Attorney
" already sworn, or Clerk already admitted, en-
" tred or seated, or which hereafter shall be sworn,
" admitted, entred or seated, and which are or
" shall be admitted into any of the Societies aforesaid, shall put him-
" self out of the Society whereof he is, or shall be admitted, until he
" be admitted of some other of the said Societies, and deliver to the
" Treasurer or Principal of such Society, whereof he first was a Mem-
" ber, a Certificate in Writing, signed by such Treasurer or Principal,
" testifying his being admitted of such other Soci-
" ety, (except such Person shall totally leave off
" the Practice of the Law as an Attorney, or Clerk
" in any of the said Courts.)

No Attorney shall put
himself out of the Society
he is of, until he is ad-
mitted of another.

Except he totally leaves
the Practice of the Law.

" And whereas by the Usage, Custom or Orders of the Inns of
" Chancery, the Members thereof were obliged to, and did come into
" Commons, and continue therein, according to the Orders of such
" Society, to their great ease in transacting their Causes one with ano-
" ther, and much Benefit to their Clients. But of late, most, or a
" great Number of the said Attorneys and Clerks, have neglected to
" come into Commons, or continue therein, according to the respec-
" tive Orders of the said Inns of Chancery, to the great Decay and
" a Detriment of those Societies,

" It is farther ordered, That from the end of
" this present Term, the Attorneys and Clerks
" which now are, or shall be admitted into any of
" the Inns of Chancery, do, and shall come into and continue in
" Commons for the Time or Times, as by the Orders of such Society,
" whereof they are or shall be admitted, is, are, or shall be ordered,
" limited or appointed for them so to do: And in
" case any Attorney or Clerk aforesaid, shall offend
" against this Rule, or any part thereof, such Attorney shall be put
" out of the Roll of Attorneys; and such Clerk so offending shall be
" discharged and displaced from such Office to which he belongs, un-
" til he or they give Obedience to this Order: And the Secondary of
" the said Court of Queen's Bench, and the respective Prothonotaries,
" and Clerk of the Warrants of the Court of Common Pleas, and the
" Queen's Remembrancer of her Court of Exchequer, or his Deputy,
" for the Time being; and all other Officers whom it may concern,
" are hereby required to give Obedience to this Order; and see that
" the same (as to themselves) be duly observed.

All Attorneys obliged
to be in Commons.

The Penalty.

" And for the more effectual and better putting in Execution this
" Order, and that it may procure the Good hereby designed and in-
" tended.

" It is hereby farther ordered, That the respec-
" tive Treasurers and Principals of the Inns of
" Chancery, and the Ancients, Rulers and Gover-
" nours of the same, do and shall from Time to
" Time, by such Ways and Means as they shall see fit and convenient,
" procure and get a List of the Names of such Attorneys and Clerks of
" the said respective Courts, who are not admitted of any of the
" said

In what manner this
Order is to be put in Ex-
ecution.

" said Inns of Court or Chancery; which List the said Treasurers
 " and Principals, Ancients, Rulers and Governors, shall yearly in
 " Michaelmas Term deliver unto the Right Honourable the Lords Chief
 " Justices, and Lord Chief Baron of the said respective Courts for
 " the Time being; to the intent the Offenders against this Order may
 " be compelled to give Obedience to the same.

Governor, Principals,
 &c. to procure a List of
 the Practisers who are
 not sworn.

" And it is also hereby farther ordered, That the
 " said Treasurers, Principals, Ancients, Rulers and
 " Governors, in like manner procure and get a
 " List of the Names of such Persons as take upon
 " them to practise as Attorneys or Clerks, in any
 " of the said Courts; who are neither sworn Attorneys, or admitted,
 " entred or seated Clerks in any of the Offices of the said Courts;
 " which List is to be delivered as above, to the Intent that such Of-
 " fenders may be proceeded against in such manner as shall be thought
 " fit.

J. Holt
 Tho. Trevor
 Edw. Ward
 Ed. Nevill
 John Powell
 Littleton Powys

Jo. Blencowe
 H. Gould
 R. Tracy
 Tho. Bury
 Ro. Price
 J. Smith.

How this Rule has
 been put in Practice.

Since the making of this Rule, several Attor-
 neys and Clerks of the Courts of King's Bench and
 Common Pleas have been served with it; and up-
 on Affidavit of Service, and on Motion for an Attachment upon their
 not obeying of it, the Courts have appointed, that such Persons served
 with it should attend the Court, to shew Cause why they have not
 obeyed the Rule; and upon their being admitted into some of the said
 Societies, as the said Rule requires, and paying of six and twenty Shil-
 lings and eight Pence for the Charges of the Rule and serving of it,
 then there is to be no farther Prosecution against them: But in case
 they do not appear in Court, or shew good Cause, or be admitted, as
 the Rule requires; the Courts have frequently granted Attachments;
 and then they must pay, before they can be discharged, forty Shillings
 for the Charges of the Attachment, and Prosecution thereupon.

When Attorneys ought
 to attend in Court.

Every Attorney of the King's Bench ought to
 attend in the Court at the second Return of the
 Term; by the ancient Rules of the Court, for the
 quicker dispatch of Justice to be done to the People; and for that
 Reason, if they did not, they were to be put out of the Roll: And
 it was then ordered by the Court, that the ancient Rules of the Court,
 for regulating of the Attorneys in their Practice, should be renewed
 and set up in the King's Bench Office, (Hill. 21 Car. 1. Ban. Reg.) For
 the Attorneys to take the better Notice of them, and that they should
 not plead Ignorance, in case they should transgress those Rules.

Rule for filing of
 Common Bail.

Whereas the Clerks and Attorneys of this Court
 notwithstanding the several Rules made for the
 due filing of Common Bails, do neglect to file their
 Common

Common-Bails, to the great Prejudice of the Plaintiff, and Damage of the chief Clerk of this Court; for the Remedy whereof, it is ordered by the Court, That after the End of every Term, every Clerk and Attorney of this Court, who shall be Attorney for the Defendant, shall pay to the Plaintiff's Attorney upon joining of every Issue 1 s. 6 d. for Common Bail, unless the Defendant's said Attorney shall make it appear to the Plaintiff's Attorney that Common or Special Bail is filed: And it is farther ordered, That every Clerk for the Plaintiff, upon his Account for his Entries, shall pay to the Secondary of this Court the 1 s. 6 d. so by him received; and that every Clerk and Attorney who shall act contrary to this Rule, in any Part, shall respectively forfeit 10 s. for every Offence, to be paid to the Box of this Court. And it is farther ordered, That all Clerks and Attorneys for the Plaintiff upon signing of Judgments by Default or *non sum informatus* shall pay to the Secondary of this Court 1 s. 6 d. for Common Bail, unless it be filed before, and the 1 s. 6 d. so to be paid by the Plaintiff, shall be allowed him in his Costs. *Per Cur. Trin. 4. Willielm. & Maria Regis & Regina.*

An Attorney of either Bench, accepting a Warrant to him directed to appear for the Defendant, or subscribing the same, and doth not cause an Appearance to be entred accordingly, shall the next Term be compelled to enter his Appearance of the precedent Term, and plead to Issue, or in Default of Pleading, Judgment to be entred by Default. *Per Mr. Livesay & alias Clericos. Pasch. 21. Car. 2.*

Attorney accepting a Warrant, compellable to enter an Appearance.

If an Attorney without Warrant appear, this is a good Appearance as to the Court, and the Attorney only liable to an Action; and so, if such an Attorney mend an immaterial Point contrary to the Rule of Court, that is remediless, though a Contempt punishable by the Court. *Trin. 13. Car. 2. B. R. 1. Keb. 89. pl. 65. Godh. 74.*

Appearing without Warrant, good.

Entry of Appearance as of the first Return, when the Term was adjourn'd to another, is a Discontinuance. *Per Cur.* But doubted whether helped by Act of Continuation of judicial Proceedings. *Det. Br. 19. per Hawks, 11. H. 4. 46. b. Heir may have Deceit. Fitz. 44. 1. Keb. 273. pl. 61.*

Appearance entred after Term adjourn'd, is a Discontinuance.

In Trover and Conversion, it was moved in Arrest of Judgment, because the Plaintiff said that he was one of the Attorneys *Curie Dom. Regis*, in the said Court to hold Pleas before the King, which by him is not the Office of an Attorney; But *per Cur.* This is applicable to the Style of the Court only, and not to him. *Sed Judic. pro Quer. Pasch. 13. Car. 2. B. R. Bye versus Woodman, vide 1. Keb. 18. pl. 50.*

Attornat. Cur. Dom. Regis, &c. not applicable to an Attorney.

Note, 'Tis provided by Stat. 5. & 6. W. & M. That the Defendant shall cause his Appearance, or Common Bail, to be entred or filed within eight Days after the Return of the Process, on which

When Common Bail to be filed by Stat. 5. & 6. W. & M.

the Defendant was arrested, on penalty of 5*l.* to be paid to the Plaintiff, for which the Court shall immediately award Judgment, and the Plaintiff may take out Execution, &c.

A. gave a Warrant to confess a Judgment, but died before it was signed, yet it may be signed the same Day. At eight in the Morning *A.* gave a Warrant to confess a Judgment, and died at ten before it was signed; yet it may be done the same Day afterwards. *Raym.* 18.

Authority given to an Attorney by Word of Mouth to appear, good.

When Warrant of Attorney must be entered.

It's said, an Authority for an Attorney by Parol to appear to an Action is good enough to support a Judgment given thereupon. *Str.* Rep. 248. And that the Warrant of Attorney may be entered at any time before Judgment. 41 E. 3. 1. b. But this is since alter'd by several Statutes; as by 32 H. 8. cap. 30. & 18 Eliz. cap. 14. and by 18 Hen. 6. cap. 9. as to Process of *Capias* and *Exigent*. See also the late Act for Amendment of the Law; as to filing Warrants of Attorney upon Judgments, by *Cognitio Actionem*, *Nil dic.*, *Non Informatus*, &c. for the Plaintiff, the same Term he declares, and for the Defendant, the same Term he appears.

Attorney ought to appear, tho' his Warrant be repeal'd.

One may not repeal a Warrant of Attorney given to an Attorney to appear for him, to the intent to defraud the Plaintiff of his Appearance, but the Attorney ought to appear for him, according to the Rules of the Court, notwithstanding his Warrant is so repealed. *Trin.* 22 Car. B. R. and *Mich.* 14 Car. But after such Appearance he may change his Attorney, with the Leave of the Court, if he have good Cause to do it, and do it not in delay of his Proceedings; for the Law requires speedy Justice to be done to all Persons.

Attachment lies against Attorney for deceitful Practice.

If an Attorney doth practice deceitfully an Attachment lies against him out of this Court, at the Prayer of the Party grieved, if he make it appear so to the Court. 22 Car. B. R. For the Court hath Authority to remove all Obstructions that may hinder the equal Proceedings in Law, and to punish the Obstructors, and to right the Party injur'd thereby. *Vide Style Rep.* 426.

Common Bail to be filed within six Days after the Term when Appearance was enter'd.

What an Attorney must do upon putting in Special Bail, *de bene esse*.

Every Attorney of this Court who shall appear for any Defendant in any Action wherein Special Bail is not required, shall file Common Bail for the Defendant within six Days after the end of the same Term, whereof he appeared; and every Attorney of this Court who shall put in any Special Bail before any Judge of this Court *de bene esse*, upon a *Capi Corpus*, shall give Notice thereof forthwith to the Plaintiff, or his Attorney; and if the Plaintiff shall not except against that Bail within twenty Days after Notice thereof given to him, then upon Oath made in Writing of the said Notice on the Back of the Bail (for which Oath no Fee shall be taken) that Bail shall be filed by the Defendant's Attorney within four Days after the End of the said twenty Days; and that every Attorney of this Court who shall put in any

any Special Bail before any Judge of this Court *de bene esse*, upon a Writ of Habeas Corpus, if the Plaintiff shall not except against the Bail within eight and twenty Days after the putting in of the said Bail, then that Bail shall be filed by the Defendant's Attorney within four Days after the End of the said eight and twenty Days, upon pain that every Attorney making Default, or in not giving Notice as aforesaid, or in not filing the said several Bails, or any of them, in form aforesaid, shall forfeit and pay to the Box of his Court for his first Offence the Sum of 5 s. and for his second Offence he shall be put out of the Roll of Attorneys of this Court: And it is farther ordered, (to the Intent that Bails shall be duly filed,) That the Judges Clerks of this Court in whose Hands the Bails so taken *de bene esse* shall remain, shall within six Days after the End of every Term give a Note in Writing to the Secondary of this Court of all the Bails of the precedent Term so put in, and then remaining in their Hands, together with the Names of the Attorneys who put in the Bail, and the Day of the putting in of the same.

Penalty of making Default.

An Attorney and his Clerk were both committed by the Court for entering things against the express Rules of the Court, after Notice of those Rules given them by the Attorney of the other side. 22 Car. B. R. And worthily; for the doing of this was an apparent Contempt of the Orders of the Court, which the Court is bound to maintain, and to which they were bound to yield their Obedience.

Attorney committed for an Entry against a Rule of Court.

It was said by Rolle Chief Justice, that an Attorney who hath a Warrant to appear for his Client, may plead for him without Warrant; but the Clerks in Court said, he may plead no other Plea without a Special Warrant, but a *non sum Informatus*; ideo 2. Vide Style Rep. 480.

Attorney may plead without Warrant, if he have a Warrant to appear.

And by Goldf. 91. it is held, a Warrant of Attorney may be entered twelve Years after Judgment, the Party making Oath he had retained an Attorney, and that it was his Neglect, &c. Also see March 121. for a Diversity, where it appears there was a Warrant, and where not; but see the Statute before cited.

Warrant may be entered twelve Years after Judgment.

For entering Warrants of Attorney before and after Writs of Error brought, Vide Dyer. 2 Eliz. 180. 48 and Dyer. 5. Eliz. 225. 34 Cro. Jac. 277. March 122.

Concerning the Entry of Warrants of Attorney before and after Writs of Error brought.

And for that of Error in a Common Recovery, Dedimus & Mittimus. Vide Dyer. 5. Eliz. 220. 13. Raym. 70, 96.

And Common Recovery, &c.

It's not Error in a Common Recovery, altho' it doth not appear that there was any Warrant of Attorney for Appearance. Vide Raym. 96.

No Warrant for Appearance is not Error in a Common Recovery.

Concerning the Determination of the Power of an Attorney after Judgment, Vide 22. Ed. 3. Et è contra Attorn. 92. and 4 Ed. 3. Att. 18. 15 Ed. 3. Att. 70. Roll. Rep. 456.

Of the Power of an Attorney after Judgment.

Removal of Attorney
recorded, sufficient with-
out Entry.

Attorney receiving the
Money, may acknow-
ledge Satisfaction.

Jac. B. R. per Coke.

Sheriff may pay the
Money to the Plaintiff's
Attorney.

Concerning a Scri-
vener who receives the
Money.

Attorney's Power not
determin'd by the Judge
ment.

He may acknowledge
Satisfaction against three
by Warrant for one.

Punishment of an At-
torney that suffers ano-
ther who is put out of
the Roll to practise in
his Name.

Attorney entering Judg-
ment against Rule of
Court, put out of the
Roll.

Where an Attorney
General should sit in the
Court.

the Judges, on the left Hand of the Clerk of the Crown. But this is
but upon special; solemn, and extraordinary Occasions; for usually
he sits not there, but within the Bar in the Face of the Court. *Mich.*
22 Caa. 1. B. R.

Under-Sheriff ought
not to practise as an At-
torney.

23 Car. 1. B. R. By reason of his double Capacity and Interest, and
of his great Power he may have in the County where he is such an
Officer; it is also against the Statute.

Attorneys to account
at the End of every Term.

Purpose made; and that two, three, or more of them shall not in
like manner account in the Name of one Clerk as it hath been lately

No Clerk to sign
Writs, &c. for another
who is in Arrear.

is in Arrears with his Account, then such Clerk who should sign, or

If the Court record that the Attorney is re-
moved, it is sufficient without the Entry of the
Removal. *24 Ed. 3. 37. Fitz. Attorn. 179.*

But if an Attorney after Judgment given for
his Master, receive the Money levied upon the
Execution, he may acknowledge Satisfaction. *Per 14*

Also the Sheriff may pay the Money, or deli-
ver the Goods taken in Execution to the Plain-
tiff's Attorney. *Cobb. 217.*

See concerning a Scrivener trusted to take Se-
curity, who also receives the Money afterwards.
Exc. 2 Keb. 249. 35.

That the Authority of the Attorney is not de-
termined by the Judgment. *Vide Style Rep. 1476.*

1 Rol. Rep. 366.
And it is said, that he may acknowledge Satis-
faction on Judgment against three by a Warrant
for one. *1 Keb. 593. pl. 59.*

If an Attorney is put out of the Roll, and
another Attorney suffers that Attorney to practise
in his Name, he shall be put out of the Roll, like-
wise. *Per Hyde Ch. Just. Mich. 16. Car. 2. Regis.*

One G. H. an Attorney was ordered to be put
out of the Roll of Attorneys, for entering a Judg-
ment against an express Rule of Court. *Mich. 23 Car.*
1. B. R.

The proper Place for an Attorney General to sit
upon any special Matters, wherein his Attendance
is required in Court, in Matters Criminal, is under
the Judges, on the left Hand of the Clerk of the Crown. But this is
but upon special; solemn, and extraordinary Occasions; for usually
he sits not there, but within the Bar in the Face of the Court. *Mich.*
22 Caa. 1. B. R.

An Under-Sheriff ought to be Attorney, for it
is often the Cause of encreasing of Suits, and also
a Hindrance in Dispatch of Clients Causes. *Trin.*

By reason of his double Capacity and Interest, and
of his great Power he may have in the County where he is such an
Officer; it is also against the Statute.

Every Attorney of this Court shall account sepa-
rately by himself at the End of every Term, ac-
cording to the ancient Rules of this Court for that

Purpose made; and that two, three, or more of them shall not in
like manner account in the Name of one Clerk as it hath been lately
used. And it is farther ordered, That if any

Clerk of this Court shall sign, or cause to be sign-
ed, any Writs, or shall file, or cause to be filed, any
Rolls in his Name for any Clerk of this Court who

is in Arrears with his Account, then such Clerk who should sign, or
cause

Attorney.

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cause to be filed such Rolls in his Name shall pay the Arrears of the Account of such Clerks for whom such Writs were signed by him, or any Rolls filed by him, *per Cur. Trin. 20. Car. 2. Regis.*

If the Attorney for the Plaintiff or Defendant, do die, hanging the Suit, and the Party whose Attorney is dead, have Notice given him of it, and will not retain another Attorney to prosecute for him, the Attorney for the other Party may proceed, and is not bound to hinder his Client's Cause for it. For he is not bound to take Notice of the Attorney's Death, nor to be hindered in his Proceedings by reason of his Adversary's Obstinacy and Neglect. *Mich. 23. Car. B. R. vide postea.*

If Attorney die pending the Suit, the other Attorney may proceed, if the Party whose Attorney is dead, have Notice of

Vide 2. Keb. 199. 30. Albeit the old Books say, an Attorney may be made by Writ or by Deed, and may continually be demanded in Court; yet the Practice generally of late is only on Parol Retainer, and to enter the Warrant at any time, as well after Judgment as before; but then the Court will leave the *Custor Brevium* to sue upon the Statute, if the Warrant be not actually filed sometime before Issue, &c.

The late Practice is on Parol Retainer.

An Attorney may plead, and join Issue, That the Plaintiff is alive, and it shall not be found Error, although he be found dead. *Raym. 59. Sed vide 1. Keb. 413. pl. 119. Judgment reversed, and 1. Lev. 83. same Case, and Judgment reversed.*

Issue joined that Plaintiff is living, not Error, though he be dead.

If an Attorney dieth, the Plaintiff or Defendant must be required to make a new Attorney, unless any doth undertake the Suit as Attorney voluntarily for the Plaintiff or Defendant. *2. Keb. 275. 37.*

If Attorney die, either of the Parties must be required to make a new one.

The Plaintiff obtained a Judgment in Debt, and received the Money, and made a Letter of Attorney to acknowledge Satisfaction, and after, and before Satisfaction acknowledged, revoked his Warrant; and the Court gave Rule, that no Proceeding should be on the Judgment without Motion first made in Court. *Raym. 69.*

Money received upon a Judgment, and Letter of Attorney made to acknowledge Satisfaction, but after revoked. The Court stopt Proceedings till Motion.

The Plaintiff or Defendant may not change his Attorney pending the Suit, without Leave of the Court. (*Mich. 33. Car. 2. B. R.*) For the changing of his Attorney may reflect upon the Credit of his Attorney, in relation to his Practice, which the Law is tender of; and it may also prove prejudicial to the other Party by not understanding of this Change. *Mich. 14. Car.*

Neither Party may change his Attorney pending the Suit without Leave of Court.

Every Clerk of this Court shall pass his Account with the Secondary of this Court within six Days next after the end of *Easter Term*, and within eight Days after the end of every *Michaelmas Term*, and within ten Days after the end of every *Trinity* and *Hillary Term*, according to the ancient Custom, and several former Rules of this Court; and that every Clerk hereafter offending in the Premises, for the first Offence shall be suspended from the Privilege of Practising, and no Writs shall be

When Account to be pass'd with the Secondary.

signed in his Name, nor none of his Rolls received until he hath cleared his Account; and for the second Offence be struck out of the Roll. *Per Cur. Hill. 15 & 16 Car. 2. Reg.* But note, In the Time of the Lord Chief Justice *Holt* it was agreed upon between Sir Robert *Henly* and the Clerks then present, that the Clerks should account every two Terms.

Modern Practice in an Action of Trespass and Ejectment.

It was the old course in proceeding in an Action of Trespass and Ejectment, to deliver the Lease of Ejectment to the Party to whom the Plaintiff had made a Letter of Attorney to execute the Lease, and for the Attorney to deliver Possession of the Land upon the Delivery of the Lease. (*Pasch. 24 Car. 1. B. R.*) But now that way of Practice is disused, and the Plaintiff sends a Declaration to the Tenant in Possession with an Endorsement in *English* signifying what it is, which Declaration must be delivered to the Tenant in Possession, or his Wife; but not to his Son, Daughter or Servant.

If a Man have a Letter of Attorney to deliver a Deed, and also a Parol Authority to do it, he may make use of which he will, but not of both.

If one have a Letter of Attorney to deliver a Deed to another, and also Authority from the Party by word of Mouth to do it, he may make use of which of these he will to do it by, but not of both; for the first that he makes use of shall be effectual, and the other shall be void. (*Pasch. 24 Car. 1. B. R.*) For the Law will not warrant unnecessary and superfluous Acts; and when a Deed is once well executed, all subsequent Acts in order to the Execution thereof, are of no Force or Validity in Law.

What an Attorney must do, in order to discharge a Prisoner, charged with an Action out of this Court.

That every Attorney of this Court, who shall discharge any Prisoner charged with any Action here in Court depending, out of Prison, for want of proceeding within two Terms, shall give Notice to the Plaintiff in the said Action, or to his Attorney, to appear before one of the Judges of this Court, to shew Cause why such Prisoner ought not to be discharged for want of prosecuting, before he shall procure any Warrant under the Hand of any Judge of this Court for the discharging of any such Prisoner out of Prison; and if the Plaintiff in the said Action, or his Attorney (upon Notice to them, or either of them given) shall not appear to shew Cause to the contrary, then upon Oath to be made of such Notice, such Prisoner against whom no Proceeding hath been within two Terms, then next preceding, shall be discharged out of Prison at the Attorney's Peril, who shall procure such Prisoner to be discharged in manner aforesaid. *Per Cur. Pasch. 16 Car. 2. R.*

An Infant must appear by Guardian, not by Attorney.

An Infant ought not to appear to an Action by an Attorney, but by his Guardian; for he cannot retain an Attorney, but the Court may assign him a Guardian. (*Pasch. 24 Car. 1. B. R.*) For the Law doth take Infants and their Estates into Protection, and will not suffer them to do any Act which may be prejudicial to either; yet on the other side, the Law will not protect them to do Wrong; and therefore if there be Cause, will assign them Guardians to answer for them, and make Satisfaction out of their Estates.

So in an Action real or mixt against an Infant, he ought to appear by Guardian and not by Attorney. *Pasch. 15 Car. int. Lewis and Jones adjudged per Cur. in a Writ of Error, and the Judgment in Ejectione Firmæ against the Infant Defendant upon a Verdict had against him, reversed for this Cause. Intrat. M. 13 Car. B. R. Rot. 266. Vide Palm. 229. and Moor 665.*

Whether the Action be real or mixt.

Also an Infant may appear by Guardian, and when he comes to full Age, he may make an Attorney in the same Suit, and this shall not be Error. *Moor 665.*

Infant coming of Age may make an Attorney in the same Suit.

Where the Judgment in an Action of False Imprisonment, brought by an Infant, by his Attorney was reversed in Error; though the Judgment was given for the Infant. *Cro. Jac. 5. Cro. El. 424. Bridgm. 75.*

Judgment in False Imprisonment brought by an Infant by his Attorney, reversed in Error.

Vide 2 Keb. 139. pl. 3. Where 'tis said, Saunders pray'd that Amendment might be accepted in a Writ of Error, where it was assign'd that in Hill Term when the Action was brought, one of the Defendants in Ejection was within Age, and by Attorney, and an Infant, not saying *tempore comparencie* as per Cur. he ought: *Sed non allocatur*; for this being in an Ejection, an Error of the Defendant's own making was a Trick, and should not be favoured; and the Court refused it, though Costs were offered, &c. for an Infant appearing so must then be so.

Court refused to accept an Amendment in a Writ of Error, where it was assign'd that at the time of the Action brought, one of the Defendants was within Age.

Upon an Error of Judgment in Dower in C. B. where the Tenant appeared by Attorney, and Judgment by default was assign'd; that the Tenant was an Infant, and should be by a Guardian. *Et per Cur. reversed. 3 Keb. 436. 42.*

Error of Judgment in Dower reversed, where the Tenant, who was an Infant, appeared by Attorney.

Vide Fitz. Attorn. 91. In a Writ of Ward brought by Baron and Feme by Attorney; it's said, the Feme may remove the Attorney without Consent of her Husband. *21 Ed. 5 12. adjudged.*

Where Feme may remove the Attorney without Consent of Baron.

Defendants in criminal Cases, but not capital, plead by Attorney *ex Gratia Cur. sed non ex rigore Juris. 1 Lev. 146.*

Defendants in criminal Cases, not capital, plead by Attorney.

The Attorneys ought to be governed in the ordinary manner of their Practice, by the Master of the Office, and if any Difference arise between them concerning it, he is to hear both Parties, and to order the Matters in Difference betwixt them, and they are to submit to him. (*Pasch. 24 Car. 1. B. R.*) For the Court is not to be troubled but in extraordinary and difficult Matters of Proceedings.

Attorneys in their common way of Practice to be governed by the Master of the Office.

If there be divers Defendants declared against in one Declaration, the Attorney in the Cause on the Defendants Part, cannot be compelled to appear for more of the Defendants, than for those from whom he had Warrant to appear. (*24 Car. 1. B. R.*) For the Defendant's Cases may be different, altho'

Where there are several Defendants, the Attorney cannot be compelled to appear for more than those for whom he had Warrant to appear.

the

the Plaintiff declare against them jointly, and each of them hath liberty to make choice of what Attorney he pleaseth, and to defend himself as he shall be best advised.

That in every Action of Trespass and Ejectment, where by the Rule of the Court the Defendant shall acknowledge Lease, Entry and Ouster, for so much of the Premises mentioned in the Declaration as is in the Possession of the said Defendant or his Under-Tenants, the Attorney of the said Defendant shall forthwith deliver to the Plaintiff's Attorney a true Note in Writing of the Tenements, so being in the Possession of the said Defendant or his Under-Tenants. *Per Cur. Trin. 16. Car. 12. R.*

Attorneys of the King's Bench ought to be allowed in all Circuits as the Attorneys of the Common Pleas are, although it hath been denied them in the Western Circuit; and they ought not to be compelled to pay extraordinary Fees for practising there. *Per Roll. Pasch. 1650. 1 Maii.*

Attorneys of B. R. to be allowed in all Circuits as Attorneys of C. B.

For they are equally Attorneys for the Good and Ease of the People, with the Attorneys of the Common Pleas, and therefore it is reason they should be equally privileged. *Vide 1 H. 7. Fol. 12. 2.*

An Action upon the Case lies for the Client against his Attorney, if he plead a Plea for him, for which he hath not his Warrant. (*Hill. 1649. B. S.*) And so it is if he appear for him without a Warrant; for he may be damnified by his Appearance, as well as he may by his Pleading for him.

Action on the Case lies against an Attorney for pleading a Plea without Warrant.

An Action of the Case was brought against an Attorney for entering Judgment without Warrant in an inferior Court; the Defendant pleaded, he was an Attorney above at *Westminster*, and that such may prosecute in inferior Courts; but because he said *super* instead of *coram* *Judicibus in Cur. inferior*, it seems a *respond. ouster* was awarded. *3 Keb. 611. pl. 65.*

Action brought against an Attorney for entering a Judgment without Warrant in an inferior Court.

But it is said an Attorney in B. R. cannot as such practise in the Courts of London. *Idem 432. pl. 35.*

Attorney of B. R. cannot as such practise in the Courts of London.

Attorneys of B. R. to be sworn as those of C. B.

B. S. This was a good Provision for the People to make the Attorneys the more conscientious and careful in their Clients Business.

In what Cases Attorneys shall not make out Writs, *Ac etiam Billa*, &c.

For the avoiding of Oppression under the Colour of Process issuing out of this Court, it is ordered, That no Attorney presume at his Peril to make out, or cause to be made out, any Precept or Writ with a Clause (*Ac etiam Billa*, &c.) against any Heir, Executor or Administrator; nor in any Case whatsoever, where, by the Custom of the Court, special Bail is not required. And that if the Defendant shall be lawfully delivered from an Arrest upon any Process, the said Defendant shall not be again arrested at the same Time, by virtue

virtue of another Process, at the Suit of the said Plaintiff; and if any Attorney or Plaintiff, in the said Process named, offend in the Premises, the Name of every Attorney so offending shall be put out of the Roll of Attorneys, and as well the Attorney as the Plaintiff in the said Process named, shall be respectively punished as the Court shall think fit. *Per Cur. 15 Car. 2.*

Penalty of so doing.

One cannot force an Attorney to be his Attorney against his Will. By *Rolle* Chief Justice.

None can force an Attorney to act for him against his Will.

One may be an Attorney for a Client upon Record, and yet another Attorney may act all the Business for his Client. But the Attorney upon Record is the Attorney that the Law takes notice of.

One may be Attorney on Record, and another do the Business.

That no Bailiff or Sheriff's Officer shall presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to acknowledge a Judgment, but in the Presence of an Attorney for the Defendant, which Attorney shall then subscribe his Name thereunto; which said Warrant shall be produced when the said Judgment shall be acknowledged: And if any Bailiff or Sheriff's Officer shall hereafter offend or do contrary-wise, he shall be severely punished for so doing.

No Bailiff to take a Warrant to acknowledge a Judgment, except an Attorney be present.

An Attorney it is said upon a Warrant given by consent after the Continuance-Day, but dated before, may enter Judgment by *non sum informatus* of the Term preceding, before the Effoin Day of the following Term, but not by Confession. *Vide 2 Keb. 351. pl. 39.*

When an Attorney may enter Judgment after the Continuance-Day.

In the Case of one *Boyle and Scarborough, Pasch. 1656. B. S.* *Glyn* Chief Justice commanded a Rule to be made, and set up in the Office, That none shall retain an Attorney in a Cause where an Attorney is formerly retained, without first acquainting the Attorney that was first retained, or the Secondary in the Office, upon pain of 5*l.*

None to retain an Attorney in a Cause, in which another was retained, without acquainting him with it.

If an Attorney die pending his Client's Cause, his Warrant of Attorney is determined, and his Clerk may not proceed in the Suit without another Warrant: By *Rolle* Chief Justice. For the Attorney's Clerk is not trusted by the Client, but the Master, and by his Death the Trust is determined.

If Attorney die pending the Cause, his Warrant is determined.

By *Glyn* Chief Justice: It is against the Rules of the Common Pleas, and against the new Rules of this Court, for one to change his Attorney in a Suit without good Cause, and the Leave of the Court. *Pasch. 1656. B. S.*

Attorney not to be changed without good Cause or Leave of Court.

An Attorney shall not have Privilege on a Foreign Attachment of Goods in his own Hands for others Debts. *2 Keb. 346. pl. 34.*

No Privilege on Foreign Attachment of Goods in his own Hands.

The Plaintiff pray'd Special Bail against the Defendant, who was an Attorney of the Court, shewing Bonds of 500*l.* and a great Debt on Account. But *per Cur.* being an Attorney, they cannot force

The Court will not compel an Attorney to give Special Bail, though the Debt be great.

it, being contrary to his Privilege, though but an Attorney at large.
2 Keb. 435. 78.

Action brought by an Attorney as Executor, though in *Auter Droit*, held good after Verdict.

An Attorney brought an Action as Executor, although it was in *Auter Droit*, yet held good after a Verdict. Trin. 1654.

Attorney absenting from Court for a Year loses his Privilege.

In the Case of *Ridley and Carr*, Pasch. 1656. B. S. it was said by *Glyn* Chief Justice, That by the new Rules, if an Attorney of this Court do absent himself from the Court, and not give his Attendance for a whole Year together, he loses his Privilege, and so was it ruled in this Case.

The Court exercises equitable Jurisdiction concerning Attorneys Clerks, &c.

In all Disputes concerning Attorneys Clerks, and their Articles, or Money given with them, the Court exercises an equitable Jurisdiction upon Motion, and in many Cases appoints a Restitution upon the Death of the Master or Clerk, of part of the Money given, according to the Time actually served. The Court held it most conscionable, and that the Clerks of the Court are to be regulated in all these Things by the Court, and they ordered 40 l. out of 80 l. to be returned to one S. within a Week, his Son dying within three Years of the five, and said in case of Default they would imprison him, and put him out of the Roll. 2 Keb. 38. pl. 31.

The Court will not compel an Attorney, &c. to deliver Writings, if Money be due to him.

If an Attorney, Solicitor, or Counsellor get Writings into his Hands, upon account of any Suit or Cause depending, and refuse to re-deliver them, there being no Fees due to him, the Court upon Motion will compel a Re-delivery of them, without forcing the Party to an Action for such his Writings; but if there be Fees due to him, the Court will not force the Delivery until the Fees to be taxed by the Master of the Office be paid.

'Tis a good Plea to an Action brought by an Attorney for his Fees, that the Defendant never had a Bill.

'Tis said to be a good Plea to an Action brought by an Attorney for his Fees, That the Plaintiff did not give the Defendant any Bill of Charges, according to the Statute. Raym. 245.

The not delivering of a Bill is a Bar in an *Assumpsit* for Fees. But upon giving a Bill the Fees must be paid.

So 3 Keb. 118. pl. 3. He is barr'd thereby in *Assumpsit* for Fees and Charges by not delivering a Bill; but it is but a temporary Bar. The Debt being confess'd, on new Delivery of a Bill, the Fees must be paid. *Per Cur.* And there farther said, he need not shew in what Court the Charges were laid out. *Contra* of a Solicitor. Vide 3 Keb. 514. pl. 71.

As to Acts of Parliament 1 Ann. cap. 22.

It is very necessary for all Attorneys to read and consider well the Act of Parliament made 1 Anne Regine, cap. 22. entituled, *An Act for the preventing Frauds in Her Majesty's Duties upon stamp'd Vellum, Parchment and Paper*, and the other Acts made since, relating thereunto.

An Attorney joined with another, loses his Privilege.

An Attorney is joined Defendant with another, the Declaration must not be against one Defendant in *Custodia Mar.*, and against the other in *propria Persona*, but against both, in *Custodia Mar.* because

because the Attorney hath in that Case lost his Privilege. 9 W. 3. Dyer 377. 2 Sid. 157. 1 Vent. 298, 299.

A Filazer of the Court of King's Bench was arrested, and he moved to be discharged upon Common Bail, because of his Privilege: But it appearing to the Court, that he was very much indebted, they did not think fit to grant him his Motion; but ordered him to put in Bail to the Sheriff, and plead his Privilege as he could. Hill. 9 W.

A Filazer of the King's Bench, who was arrested, ordered to plead his Privilege.

Where a Warrant of Attorney is given to an Attorney to appear for a Defendant, the Attorney must appear for him according to the Rules of the Court; and he shall not repeal his Warrant: But the Defendant may, after such Appearance, (if he thinks fit) change his Attorney with Leave of the Court, but without leave he cannot.

Where a Warrant of Attorney for Appearance cannot be repealed.

An Attorney ought not to suffer any Person to practise in his Name, by reason of the many Mischiefs and Inconveniencies which often happen to the Clients by this Means. And the Thing is very mischievous in it self, because he who suffers another to practise in his Name, is answerable for his ill Practice, and incurs the Penalty of 20 l. by the Statute of 1 Jac. 1. cap. 2. sect. 2.

One Attorney ought not to suffer another to practise in his Name.

An Attorney was cast over the Bar, for taking of the Money for suing out of Originals, and never doing of it, and sworn never to practise again. Cro. Car. 74. pl. 2.

An Attorney cast over the Bar for not suing out of Originals when he had received the Money for them.

An Attorney, although he doth not practise, yet shall have his Privilege so long as he continues an Attorney upon Record. Lutw. 1667.

He shall have his Privilege, though he doth not practise.

It is against the Statute of 1 H. 5. cap. 4. for an Under-Sheriff to be an Attorney in any Cause in the County wherein he is Under-Sheriff; for if it should be suffered, it might be the Cause of favouring of his Clients, to the Prejudice of the Party concerned against his Client.

No Under-Sheriff to practise as an Attorney. 1 H. 5. cap. 4.

Every Clerk of this Court shall every Term, upon the passing of his Account, pay to the Officer of this Court who files the Bills, the ancient Fee of 2 s. for every Attorney and Filazer for whom he enters. Mich. 15 Car. 2. R.

What to pay to Officers upon his Account.

An Idiot a Nativitate cannot appear by Attorney; but if the Idiot continued *de sana Memoria* for a long Time a Nativitate, and afterwards, *ex sola Visitatione Dei*, became *non compos mentis*, it is not Error to appear by Attorney. See 2 Sam. 335, 336. See also Title Idiot.

Who may, and who may not, appear by Attorney.

When an Idiot sues or defends, it must not be by Guardian, *prochain amie*, or Attorney, but ever *in propria persona*. Co. Litt. 135. b. But one Non Compos must appear by Guardian, if within Age; or by Attorney, if of full Age. 4 Co. 124. b. Palm. 520.

How an Idiot must sue or defend.

And how one Non Compos.

Where

Where Common Bail is filed for a Defendant, he must answer all Bills filed against him of the same Term.

that Warrant in all Suits which are there depending against him in the same Term; (unless he, for whom the Common Bail is filed, is a Defendant in Ejectment, who comes not into Court by the Process of the Court;) so that Declarations be filed in the Office, and Copies delivered to the Defendant, or to the Attorney who filed the Bail, before the End of the same Term his Bail is filed of: For the Defendant being, after his Appearance and Bail put in, supposed to be *in Custodia Mareschalli*, the Attorney that appears for him is bound to receive any Declaration that is brought against him during that Term.

Not to receive or procure Blank Warrants.

No Attorney or Clerk of this Court shall receive or procure any Blank Warrant or Warrants from any Sheriff or his Deputy, without Writ or Writs first delivered, upon pain of severe Punishment, and Fine to be imposed upon such Sheriff and his Deputy, and utter Expulsion of such Clerks or Attorneys respectively offending in the Premises. *Pasch. 15 Car. 2.*

Must not plead a false Plea.

It is criminal in an Attorney, and against his Oath, knowingly to plead a false Plea in Abatement, purposely for Delay. *M. 8. W. tertii, B. R.*

Nor enter a Judgment upon a Warrant made by a Man under an Arrest, when an Attorney was not present.

No Attorney shall from henceforth acknowledge or enter, or cause to be acknowledged or enter'd, any Judgment, by Colour of any Warrant gotten from any Defendant being under Arrest, unless the same be enter'd into the Presence of the Attorney for the Defendant, or some Attorney who shall be then present, who shall subscribe his Name thereunto. *Pasch. 15 Car. 2. R. in B. R.* Because Attorneys are Officers of the Court, and are answerable to the Court for their Actions as Attorneys. And if no Attorney be present when such Warrant is obtained, the Court (if Judgment be enter'd thereupon) will set it aside.

Rule for the entering of Judgments.

In Michaelmas Term, 5 Anne Regine, It was ordered by the Court of Queen's Bench, That from and after the first Day of the then next Hilary-Term, every Judgment in Debt, Case, Covenant, Trespass, Trover, or any other Action, shall be enter'd fairly on the Roll, or an *Inscriptum* thereof, before such Judgment shall be signed by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the County where the Action is laid, and the Nature of the Action, with the Attorney's Name, shall be enter'd into a Book, to be kept by the Secondary of the Court for that Purpose; for which nothing more shall be paid, than the ancient and accustomed Fee for entering of such Judgment.

How to be entered into a Book.

No Record of *Nisi Prius* to be sealed, until the Issue be enter'd.

And it is further ordered, That no Record of *Nisi Prius* shall be sealed or passed at the *Nisi Prius* Office, by the *Custos Brevium* of this Court, or any

any Clerk of that Office, before the Issue in that Cause be fairly entered on Record, or an *Incipitur* thereof, and such Entry, with the Record of *Nisi Prius*, be first brought to and signed by the Secondary of this Court; for which no Fee shall be demanded or paid, but the usual and accustomed Fee, due to the chief Clerk of this Court, for Entry of such Issue on Record.

And it is further ordered, That every Attorney shall bring in all his Rolls into the Office fairly ingrossed in a good full Court-Hand, by the Times limited by former Rules; (that is to say) the Rolls of *Trinity*, *Michaelmas*, and *Hillary-Terms*, before the Essoin-Day of every Subsequent Term; and the Rolls of *Easter-Term*, before the first Day of *Trinity-Term*. And that no Attorney at large, or any other Person, shall take any Numbers, or file any Rolls, but the same shall be done by the Clerks of the chief Clerk of this Court only. *Mich. 5 Anne B. R.*

When to bring in their Rolls.

Who to file Rolls.

The Attorney ought to be satisfied his Fees, before any other Person shall be admitted to proceed in the Cause, in which he was formerly retained as Attorney, or be compelled to deliver up his Client's Writings and Papers to such new Attorney or his Client.

Attorney ought to be paid his Fees, before another be admitted to proceed in the Cause.

An Attorney being Executor, shall not sue, nor be sued as a privileged Person. *Hob. 177. 2 Inst. 157.*

Privilege not for an Executor.

An Attorney shall not have his Privilege in an Action brought by himself and his Wife; because his Privilege is allowed him by the Court for the Recovery of his Fees. See *Powell's Case* in *Dyer*, 337. 2 *Sid. 157. 1 Vent. 299.*

No Privilege for Baron and Feme.

Where Baron and Feme are sued, the Wife cannot make an Attorney, but the Husband must make an Attorney for himself and her. 2 *Saund. 213.*

A Wife cannot make an Attorney.

An Action against Baron and Feme; the Feme being within Age, she must appear by Guardian, *Danv. 602.* The Husband cannot disavow a Guardian made by the Court for his Wife. 1 *Vent. 185.* But if they bring an Action, the Husband shall name an Attorney for both.

Baron and Feme, the Feme within Age, how to appear.

The Statute of 3 *Jac. 1. cap. 7.* for Attorneys to deliver Bills under their Hands, may be given in Evidence upon *non Assumpsit*. *Shower's Rep. 338.*

Attorneys to deliver Bills signed. 3 *Jac. cap. 7.*

If an Attorney deliver his Bill of Charges to the Defendant after the Arrest, and before the Bill filed, it is well enough. 4 *Jac. R. in B. R.*

When a Bill of Charges may be delivered by an Attorney.

An Attorney of this Court may bring an Action for his Fees for soliciting in the Common Pleas, Court of Exchequer, or Chancery, and it will well lie. See *Cro. Car. 159. pl. 8, 160.*

May sue for Fees as a Solicitor.

And must have a Certificate from the Counsel and all the Officers, of what Fees and Money he hath paid them, otherwise the Bill shall not be allowed. 3 *Jac. 1. cap. 7.*

And must have a Certificate of what Fees he hath paid.

A Release obtained by an Attorney irregularly must be set aside.

A Motion was made by the Plaintiff against her Attorney, to examine his Bill; and it appeared, upon the Report of the Master, That the Plaintiff had received of her Attorney a Sum of Money which he had recovered for her; and upon the Attorney's Payment of the Money to her, she gave him a Release: And it was pretended, That she knew not it was a Release. The Court said, That if the Release had been obtained irregularly, they would lay their Hands upon it; but no ill Practice appearing, they would do nothing in it. *Pasch. 9 W. R.*

How an Attorney must plead his Privilege.

be annex'd to the Plea. *Smith and Harris, Pasch. 4 W. & M. Es Edwards & Copeland. Mich 6 W. & M. B. R.*

Not to discover any Deed shew'd to him, or Letters, or Instructions.

ent, unless he will.

No Error after a Verdict, that an Infant Plaintiff appeared by Attorney, 21 Jac. rap. 13.

An Infant Defendant must appear by Guardian.

If the Guardian is admitted *ad prosequendum*, it is Error.

Where the Infant must sue *per prochein amie*.

West. 1 rap. 47.

West. 2. rap. 14.

Guardian will not

And where by Guardian.

Where one of Age and an Infant are Executors.

may make an Attorney for him under Age. See 1 Mod. 47, 72, 296.

The Attorney must be named.

When a Warrant may be entered.

Where an Attorney pleads his Privilege, he must say, *Prout per processum sub sigillo ejusdem Curie huic placito annexo apparet*, and the Writ under Seal must be annex'd to the Plea. *Smith and Harris, Pasch. 4 W. & M. Es Edwards & Copeland. Mich 6 W. & M. B. R.*

An Attorney is not bound to discover and give in Evidence the Contents of a Deed shew'd to him by his Client, nor any Letters received from his Client, nor any Instructions given him by his Client. *Pasch. 8 Will. B. R.*

After a Verdict given in a Court of Record, Judgment shall not be stay'd nor revers'd, by Reason the Plaintiff in Ejectment or other Personal Action, being under Age, did appear by Attorney, and the Verdict pass for him. 21 Jac. cap. 13. of Jeofails.

In an Action Personal against the Infant, he must appear by Guardian, not by Attorney. *Cro. Jac. 10.* And if the Guardian for the Infant Defendant is admitted *ad prosequendum*, it is Error. 8 Co. 58. b.

The Infant Defendant cannot appear *per prochein amie*, for a Guardian and *prochein amie* are distinct, and the Suit by *prochein amie* was not before *Westm. 1. cap. 47.* and *Westm. 2. cap. 15.* and is where an Infant is to sue his Guardian, or that the Infant is Plaintiff, unless in those special Cases he must sue by Guardian, and not *prochein amie*. *Palm. 296.*

An Infant and a Man of full Age are made Executors, the Infant may sue by Attorney. 2 *Saund. 212, 213.* But *Twisden* said, That he of full Age may make an Attorney for him under Age. See 1 *Mod. 47, 72, 296.*

Where a Plaintiff or Defendant appears by--- *B. Attorn' suum* without a Christian Name, it is Error. 3 *Bulstr. 202.*

A Warrant of Attorney may be enter'd at any time after Judgment, and before a Writ of Error brought. *Dyer 180, 48, 225, 34.*

Every

Attornment.

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Every Attorney shall deliver in his Warrant of Attorney to be entr'd or filed, as by any Law or Statute it ought to be done, upon Pain to forfeit 10*l.* for every such Offence; one Moiety to the Queen, the other to the Officer with whom it ought to be filed; and also to suffer Imprisonment at the Discretion of the Court. 18 *Eliz. cap. 14.*

Every Attorney must file his Warrant of Attorney, 18 *Eliz. cap. 14.*
Upon what Penalty.

Where an Infant brings a Writ of Error, he must assign Errors by Guardian, and not by Attorney. *Co. Entr. 289.*

How an Infant must assign Errors.

An Action lies for calling of an Attorney a Common Barretor. *Cro. Car. 192. pl. 1.*

Action lies for calling of him a Common Barretor.

Attornment.

Joint-Tenant.

See Berger.

Tenant in Common.

What follows, is how the Law stood before the Statute of 4 & 5 Anne, For the Amendment of the Law; which see in the last Paragraph under this Title.

How the Law stood as to Attornments, before the 4 & 5 Ann. 2.

An Attornment made unto *Cestui que Use*, is a good Attornment in Law, unto the Feoffee of the Land, if the Tenant of the Land have notice of the Use, when he did attorn Tenant to *Cestui que use*. *Mich. 22 Car. 1 B. R.* For then he is not ignorant in whom the Estate in Law is, and to whom he makes the Attornment.

Attornment to *Cestui que Use*, good if Tenant had Notice of the Use.

An Attornment made after Sun-set is not a good Attornment: For an Attornment is a solemn Act, and ought to be done so that Notice may be taken of it, which shall not be presumed to be in the Night. *Mich. 22 Car. 1. B. R.* For that is the Time for Rest, and not for Action.

Attornment made after Sun-set, not good.

Uses shall vest without Attornment. *Vaugh. Rep. 50.*

Uses will vest without Attornment.

A Reversion was granted to A. B. The Tenant for Life having Notice of this Grant said to C. D. and E. F. two Strangers, that he was well pleased and content, for that the Grantee was his Cousin: This was held a good Attornment, altho' the Words were spoken to Strangers. *Cro. Car. 440. pl. 2. 441.*

Words spoken to a meer Stranger, made a good Attornment.

An

Attornment.

Attornment of one Joint-Tenant, is good.

Attornment with Notice to part, is good.

Must be pleaded.

Grant of a Reversion pleaded to an Avowry, *sans* Attornment, is good after Verdict.

Attornment. 2 Lev. 234.

A Reversion in a Term is not assignable, without a Deed and Attornment. 2 Lev. 155.

Needs no Attornment to a Devise or Fine to Uses.

Fine *sur Concessit* is executed by Attornment of a Term for Years.

Grants to be made by Fine, or otherwise, of any Manors, &c. or of Reversions or Remainders of them, shall be good, without Attornment of the Tenant.

4 & 5 Annæ.

4 & 5 Annæ, For Amendment of the Law.

Estate any such Reversion or Remainder shall and may be expectant or depending, as if Attornment had been had and made.

But Notice must be given of such Grant.

Condition for Nonpayment of Rent.

An Attornment of one Joint-Tenant for Life, shall vest the entire Reversion in the Grantee. 2 Rep. 66. b.

Attornment with Notice to part, is a good Attornment for the whole. 2 Rep. 67. b.

Attornment must be pleaded, but Livery not. 8 Rep. 82. b.

Grant of a Reversion pleaded to an Avowry without Attornment, and a Verdict for the Avowant upon *Riens arere*; this cures the want of

Reversion in a Term not assignable, *sans* Deed and Attornment.

To a Devise or Fine to Uses, there needs no Attornment. 2 Lev. 240. Co. Lit.

By the Attornment of a Term for Years, a Fine *sur Concessit* is executed, and the Estate as well vested as if by Livery. 2 Lev. 156.

By the Statute of 4 & 5 Annæ, it is enacted, That all Grants and Conveyances to be made by Fine, or otherwise, of any Manors or Rents, or of the Reversions or Remainders of any Messuages or Lands, shall be good and effectual, without the Attornment of the Tenant of any such Manors; or of the Lands out of which such Rent shall be issuing; or of the particular Tenant upon whose

But Notice must be given of such Grant to the Tenant, before he shall be prejudiced by Payment of any Rent to such Grantor, or Breach of any

Audita Querela.

Contribution.

Discharge.

See Execution.

Sci. facias.

An Audita Querela is only an Equitable Action, and may be brought by a Reversioner, or him that hath but interesse termini. March R. 71. Also it lies where a Man hath a Release, but hath no Day in Court to plead it.

Audita Querela is an equitable Action, and may be brought by a Reversioner.

If a Judgment given in this Court be removed into the Exchequer Chamber by a Writ of Error, and the Party who had the Judgment (notwithstanding the Removal of it by the Writ of Error) do bring an Action of Debt upon this Judgment in the Court where he obtained the Judgment, (as he may do) and recovers Judgment thereupon, and afterwards the first Judgment be reversed by a Writ of Error, the Defendant against whom the second Judgment was obtained, may bring his *Audita Querela* to be relieved against the Action of Debt brought upon the Judgment which is reversed. 3 Feb. 1650. B. S. For when the Judgment is reversed upon which the Action of Debt was grounded, there is no Cause left to support the Action; and therefore all Prosecution of the Action afterwards, is accounted in Law but an unjust Vexation, for which an *Audita Querela* lies.

Judgment in B. R. remov'd in Cam. Stacc. by Writ of Error.

The Party who had the Judgment brings Action of Debt upon it, and recovers Judgment.

If the first Judgment be reversed, *Audita Querela* lies.

But had an Action of Debt been brought upon a Judgment after the Record certified into the Court of King's Bench from the Common Pleas, or an Inferior Court, there the Defendant might well plead *Nul. tal. Record*, because *Recordum & Processus cum omnibus et tangentibus* are removed into the Bench, and nothing remains in the Court below, but the whole Proceedings are entered upon Record in the King's Bench, and that Court affirms or reverses the Judgment as they see Cause.

Otherwise had an Action been brought on a Judgment after Record certified out of an inferior Court into B. R.

Court of King's Bench, but the whole Proceedings are entered upon Record in the King's Bench, and that Court affirms or reverses the Judgment as they see Cause.

One Tritton, that was in Execution, brought his *Audita Querela* and prayed that he might be bailed, and it was granted, and he was bailed by four Persons. 7 Feb. 1650. B. S. For this Bailing

One in Execution bailed upon bringing an *Audita Querela*.

of him is not a Discharge of the Execution; for by his Bail he is in Custody of the Law, and if he make not out his *Audita Querela*, he or his Bail must render his Body in Execution again, or else the Bail must pay the Debt for which he lay in Execution.

A Man has two Judgments against several Persons for the same Debt, and extends their Lands, *Audita Querela* lies not 'till Satisfaction.

Assault brought against two, Plaintiff releases one. *Audita Querela* lies for the other.

A Man hath two Judgments against several Persons for the same Debt: he may extend the Lands of both of them, and an *Audita Querela* will not lie until there is Satisfaction,

An Action of Trespass is brought against J. S. de eo quod ipse simul cum A. B. insult. fecit, &c. and a Verdict and Judgment is recovered against J. S. afterwards the Plaintiff releaseth A. B. here J. S. shall have an *Audita Querela* upon this Release. H. 13 Car.

See more of this Head in General Abridgement, Tit *Audita Querela*, from 628 to 644.

Who shall have it.

This is a Commission to the Judges to call the Parties before them, and to do Right.

And if the Defendant dies his Executor may be called in by *Sci. fa.*

Where an *Audita Querela* lies, and where not.

where the Party is condemned by Default, and had no Day in Court to plead it, it lies. Cro. El. 25. pl. 3. Cro. El. 4.

Payment of the Money is a good Surmise to let to Bail.

Error to Reverse a Judgment in an *Audita Querela*, for Nonage.

Inspection.

Sci. Fa.

Judgment reversed: either a *Sci. Feci*, Error) Then came

A new Writ granted to supply the Inspection.

Judgment thereupon, and the Cause of the Reversal thereof, and upon all the Matter to pray to be relieved; all which was granted. Cro. Jac. 59. pl. 6.

None but the Party grieved shall have it. Cro. Jac. 227. pl. 2.

An *Audita Querela* is not in the Nature of any Writ, but a Commission to the Justices to call the Parties before them, and to hear the Complaint, and to do Right; and altho' the Defendant be dead, pending the Writ, yet the Executor may be well called by a *Sci. fa.* Cro. El. 634. pl. 31.

An *Audita Querela* lies not after Judgment upon a Matter which he might have pleaded before; but where the Party is condemned by Default, and had no Day in Court to plead it, it lies. Cro. El. 25. pl. 3. Cro. El. 4.

Payment of the whole Money after the Judgment, is a good Suggestion in an *Audita Querela* to bail. Cro. Jac. 29. pl. 7.

An Infant brings Error to reverse a Judgment in an *Audita Querela* upon a Recognizance acknowledged during his Nonage, where he was inspected and adjudged to be within Age; and he had thereupon a *Sci. Fa.* against the Commuzee, and upon a *Nihil* returned, it was adjudged that the Recognizance should be void: (whereas there should have been or two *Nichils*, and for that Reason held to be the Party and shewed that he was of full Age, and can't have a new Writ of *Audita Querela* to be inspected, and therefore prayed that he may have a new Writ comprehending the first Inspection and Judgment thereupon, and the Cause of the Reversal thereof, and upon all the Matter to pray to be relieved; all which was granted. Cro. Jac. 59. pl. 6.

A bare

Audita Querela.

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A bare Surmise which is but Matter of Fact, is not sufficient to avoid a Judgment, and being but to give another Action upon a Bond, is not sufficient to avoid a Bond. *Cro. Jac. 579. pl. 8.*

A bare Surmise which is but Matter of Fact, is not sufficient to avoid a Judgment.

It lies upon a Release after Verdict at *Nisi prius*, and before Day in Bank. *Cro. Jac. 646. pl. 10.*

It lies upon a Release after Verdict at *Nisi prius*, and before Day in Bank.

Lands are extended upon an *Elegit*, and conveyed over to several Hands, then the Plaintiff in the Judgment releases all Judgments and Executions, and the Defendant brought his *Audita Querela*; and adjudged that it lies: For the Plaintiff being Party to the Judgment, his Release hath discharged it. *Cro. Car. 214. pl. 4.*

After an Extent upon an *Elegit* and conveyed to several Persons, the Plaintiff in the Judgment releases, this Writ well lies.

Where an *Audita Querela* is grounded upon a Deed under Hand and Seal, or where the Party is in Prison, there the Process upon an *Audita Querela* must be *Sciri facias*: But where it is not grounded upon a Deed, there the Process must be *Venire facias*, and after that a *Distringas*, and so *ad infinitum*, until the Defendant appears. *Hill. 5 W. & M. B. R.*

How the Process to be in an *Audita Querela*.

In all Cases where a Man hath a Deed to discharge himself by, he need not sue out his Writ of *Audita Querela* thereupon, but may bring his *Sciri facias* against the Defendant, *ad Cognoscendum scriptum*, and he shall have the same Benefit thereupon, as upon his *Audita Querela*. *Mich. 5 W. & M. B. R.*

Where a *Sciri facias*, *ad Cognoscendum scriptum*, lies.

Upon an *Audita Querela* brought upon a Release or other Deed, there shall not be any *Supersedeas*, until the Plaintiff in the *Audita Querela* hath first come into Court, and brought his Witnesses there to prove his Deed; but if Execution be executed before Proof of the Deed, no *Supersedeas* shall be granted, unless Bail be put in by the Allowance of the Court: Because Execution being executed, it comes too late. *Mich. 8 W. R. B. R. See 11 H. 6. cap. 10.*

When the Plaintiff may have a *Supersedeas*, and when not. See 11 H. 6. cap. 10.

If one be taken in Execution, and is afterwards set at Liberty by the Plaintiff, and then is taken again, and detained in Prison upon the same Execution, he may bring his *Audita Querela* to be enlarged: For by the Enlargement of the Prisoner by the Plaintiff, the Execution is discharged; and an Execution once discharged, is for ever discharged, and cannot be revived, for the Discharge supposeth a Satisfaction.

It lies for one discharged out of Prison.

One, who was in Execution, brought his *Audita Querela*, and prayed, that he might be bailed; which was granted, and he was bailed by four Persons who entred into a Recognizance for that Purpose. For this Bailing of him is not a Discharge of the Execution, for by his Bail he is in Custody of the Law, and if he make not out his *Audita Querela*, he must render his Body in Execution again, or pay the Debt for which he was in Execution, or else the Bail must pay it.

One in Execution bailed upon an *Audita Querela*.

Ubert

Audita Querela.

Where *Audita Querela*, or *Sci. fa. ad Cognoscendum scriptum*.

Where the Plaintiff in the Judgment releases the Defendant in the Judgment of all Judgments and Executions; the Defendant, upon this Release, may either bring his Writ of *Audita Querela*, or else he may, out of the same Court where the Judgment is entred, sue out a *Sciri facias* against the Plaintiff in the Judgment, *ad Cognoscendum Scriptum suum Relaxationis*. Mich. 5 W. & M. & Hill. 5 W. & M.

No Interest in Law vests in the Assignee of a Statute.

Where the Conuzee of a Statute assigns over the Statute, and afterwards releases to the Conuzor, and the Assignee sues the Statute, the Conuzor may bring his *Audita Querela*; and the Assignee shall be left to take his Remedy against the Conuzee: For upon the Assignment no Interest in Law vested in the Assignee. Pasch. 35 Car. B. R. Cro. Car. 214.

Conuzor and his Heir may have *Audita Querela* before Execution, but a Purchaser cannot.

The Conuzor and his Heir may have an *Audita Querela* before Execution, but a Stranger or Purchaser shall not until he be ousted by Execution. 3 Rep. 13. b.

It lies not against the King.

An *Audita Querela* lies not against the King. Cro. Jac. 481.

How Infancy to be tried upon it.

Infancy in an *Audita Querela* must be tried by Inspection; and therefore it must be brought during his Infancy, and then tried, for it cannot be afterwards. Co. 2 Inst. 673. 1 And. 25. Dyer 232. pl. 9.

Where the Defendant may have his *Audita Querela* upon a Release, and where not.

If the Plaintiff releases the Judgment, and afterwards sues out a *Sciri facias* upon it, and the Defendant is summoned and makes a Default, he shall never have an *Audita Querela*, nor the Benefit of his Releases. But upon two *Nichils* he shall. Hob. 283. See Raym. 19. 1 Sid. 54. 1 Lev. 41, 42.

Where after Execution, and where not.

But in Case of an Execution upon a Statute Merchant or Staple, an *Audita Querela* lies upon a Release before the Execution, because he had no Day in Court (as before) to plead it. 21 E. 3. 13. b.

Two Judgments upon one Bond, *Elegit* sued upon one *Ca. fa.* upon the other, he shall have an *Audita Querela*.

Two are bound in a Bond, and two several Judgments against them, an *Elegit* is sued out, returned and filed against one, a *Ca. fa.* is sued out against the other, and adjudg'd that an *Audita Querela* lies for him to set it aside. Cro. Jac. 338. pl. 3. 339.

Two Judgments in several Counties against three in Battery; one of them is satisfied.

This Writ lies to discharge the other.

other Judgment.

Two Judgments obtained upon Trials in two several Counties for one and the same Battery against three Persons, one is taken in Execution and Satisfaction acknowledged upon one of the Judgments; the other two shall have an *Audita Querela* upon the Cro. Car. 443. pl. 14. 444.

Issue in Tail may enter, and is not put to his *Audita Querela*.

and is not put to his *Audita Querela*.

It lies where the Sheriff delivers more in Value than a Moiety.

Tenant in Tail acknowledges a Statute and dies, the Conuzee sues out Execution against the Issue in Tail, he may have an Affize, and avoid the Statute, *Audita Querela*. Cro. Jac. 85. But he may bring it if he will.

Whereupon an *Elegit* more in Value than a Moiety is delivered by the Sheriff this is not void, nor a Disseisin, but the Party is put to his *Audita Querela*. Danv. 629. 2 It

Audita Querela.

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It cannot be brought upon a Release until the Judgment be actually entered upon Record; and after a Verdict, the Court will compel the Plaintiff to enter his Judgment according to the Verdict.

1 Mod. 111. 3 Keb. 291.

Conuzee of a Statute sues out Execution before the Day given by the Defeazance, for the Performance of the Condition; although the Condition be after broke, *Audita Querela* lies, because he hath extended the Land before his Time. 46 E. 3. 27. b.

After Judgment against the Bail, the Judgment against the Principal is reversed, or the Money paid by the Principal. Roll. R. 383, 384. The Bail may have an *Audita Querela*. Cro. Jac. 645, 646. 8 Rep. 143. a.

If the Conuzee purchases Lands in Fee of the Conuzor, and then aliens it, and afterwards sues out Execution of the Statute upon this Land, the Alience may have his *Audita Querela*. 20 E. 3. 30.

Where the Conuzee of a Statute-Staple had purchased Part of the Land of the Conuzor, and J. S. another Part of it, and yet had caused the Land of J. S. to be extended and delivered in Execution, an *Audita Querela* will well lie for J. S. thereupon. Cro. El. 364. pl. 27.

A Conuzee of a Statute takes a Lease for Years of the Reversion and Rent reserved upon the Lease for Years; Lessee attorns, Conuzee assigns over his Lease; then B. Conuzee of a *puisne* Statute, extends this Reversion and Rent, and A. by virtue of his elder Statute extends this Reversion and Rent: And adjudged that A. by his Acceptance of the Reversion and Rent, and assigning of it over, hath suspended his Extent during the Term. Cro. Jac. 424. pl. 9. 425. 477. pl. 11.

Whether the Plaintiff in an *Audita Querela*, if it be found for him, shall have Restitution or no, there being no such thing mentioned in the Judgment. See 1 Sid. 74. pl. 4. 1 Keb. 245. pl. 4. 260. pl. 39.

No Extent upon any Statute, Judgment or Recognizance, shall be avoided or delayed, because part of the Lands extendible are omitted, saving to the Party whose Lands are extended, his Remedy for Contribution. Note, No Statutes, unless defeazanc'd, for Payment of Money only, nor Extents, unless within twenty Years after Judgment had, are within this Act. 16 & 17 Car. 2. cap. 5. made perpetual, 22 & 23 Car. 2. cap. 2.

Lies not till Judgment entered.

Lies where Execution is sued out before its Time.

It lies for the Bail after the Reversal of the Judgment against the Principal.

The Alience of the Conuzor may have it.

The Purchaser of one part of the Land may have it against the Purchaser of another part of it.

Conuzee takes a Lease for Years of the Reversion and Rent, and assigns over.

Conuzee of a *puisne* Statute extends this Reversion and Rent: Then A. extends.

A. hath suspended his Extent during the Term.

Whether there shall be Restitution or no, upon a Recovery in an *Audita Querela*.

Statute, Judgment, Part extended, Contribution, Statutes for Payment of Money, Extent upon Judgment, when. 16 & 17 Car. 2. cap. 5. 22 & 23 Car. 2. cap. 2.

Tenants in Common.

Joint-Tenant.

A new Writ lies after a Nonsuit, but not a *Superfedeas*.

See more on this Head in *General Abridgment*, Title *Audita Querela*, from Page 628. to 644.

Audita Querela.

Tenants in Common shall join in an *Audita Querela*. *Moore* 664. Also one Joint-Tenant may have it without his Companion. *March Rep.* 71.

If a Man be non-suited in an *Audita Querela*, he may bring a new Writ. 22 E. 3. 4. b. But he shall not have a *Superfedeas*. F. N. B. 104. O.

Auditor.

See Accounts.

Auditors, what.

Auditors are Persons appointed by the Court to Audit and settle the Accounts in Actions of Account Render, and other Cases.

Auditors have Charge of many Things that are not in the Crown.

Their Books are not Records.

Payment a good Plea before them, but *plene Computavit*, not.

Auditors, Judges of the Account, but the Account is traversable.

not? But the Plaintiff may traverse the Defendant's Account, if he thinks fit.

The Court Judges of the Action.

The Auditors of the Account.

Where Robbery is a good Plea, and where not.

Many Things are in Charge with the King's Auditors which are not in the Crown. (*Pasch.* 24 Car. 1. B. R.) For a Thing cannot be vested in the Crown, but by Matter of Record, which the Auditors Books are not.

Payment of Money is a good Plea before Auditors; but *Plene computavit* before Auditors, is an ill Plea. *Hill.* 12 Car. 1.

Auditors assigned by the Court to receive and audit the Accounts upon an Action of Account brought, are the proper Judges of the Cause, viz. Whether the Party accountable be in Arrear or

Where the Matter of the Plea confesseth the Defendant accountable, it cannot be pleaded in Bar, for they are Judges of the Action, not of the Account; but the Auditors are Judges of the Account. *Br. Account* 48. 1 *Brownl.* 24.

It is no Plea in an Account that he was robb'd; but before Auditors it is a good Plea, saying, That it was without his Default or Negligence. *Co. Litt.* 89.

It is a good Discharge before Auditors, for a Receiver to render the Money which he received, and to make Oath that he could not find any thing to buy which he might gain by; and thereupon he shall be discharged of the Profit which should have been made. 1 Roll. Abr. 124. pl. 4.

Where the Defendant shall discharge himself upon his Oath.

Where a Factor hath a bare Authority to sell, he hath no Power to give a Day of Payment, nay though they were *Bona Peritura*; but he must receive the Money immediately upon the Sale. 2 Mod. 100.

What a Factor is to do.

In an Account *ex quo fit* Receptor of a Jewel ad Merchandizand. the Defendant before Auditors pleads that he sold it to B. for 40 l. This is no good Plea; for it is not shewn how the Plaintiff shall come by his Money, viz. that he took Bond or other Security. Tel. 202.

The Defendant pleads a Sale for 40 l. and says not that he took Bond, or how the Plaintiff might come by it, it is naught.

Averment.

See Abowry.

The hoc paratus est verificare, at the Conclusion of a Plea in Abatement of Bar, is an Offer to prove his Plea, and is called an Averment. Terms of the Law. 73. 2.

Averment of a Plea, what.

Where a Statute is recited, there one may not aver that there is no such Record, for generally an Averment as this is, doth not lie against a Record; for a Record is a thing of solemn and high Nature, but an Averment is but the Allegation of the Party. (21 Car. 1. B. R.) And not so much Credit in Law to be given unto it.

Where a Statute is recited, one may not aver there is no such Record.

By the late Statute for Amendment of the Law, no Exception or Advantage upon a Demurrer shall be taken for want of Averment of *hoc paratus est verificare*, or *hoc paratus est verificare per Recordum*, except the same shall be specially set down for Cause of Demurrer.

Upon Demurrer no Exception can be taken of want of Averment of *Hoc paratus*, &c. except it be alledged for Cause of Demurrer.

Where the Averment of Performance on part of the Plaintiff in his Count in *Assumpsit*, Debt or Covenant is requisite, and what is a good Averment. 1 Lut. 249, &c. 489.

Where Averment of Performance is requisite.

What

What is sufficient Averment by Implication.

Where it ought to be averred that the Heirs of the Obligor were bound.

If Executor have Assets, the Court will intend he was bound without Averment. *Alister* of an Heir.

Of Averments in Declarations.

What is a sufficient Averment of Life.

Life of Tenant in Tail, and for Life, ought to be alledged.

Averment *in facto*.

What appears by Record need not be averred.

One may not aver contrary to the Condition of an Obligation.

made upon good Deliberation, and before Witnesses, and not be contradicted by a bare Averment. 7 Nov. 1650. B. S.

An Averment may be against ministerial, not against judicial Acts.

No averring against a Record.

Termis nondum finito implies, that the Tenant for Life is living.

So *ad hoc seifitus existit* implies his Life.

Want of an Averment of a Life, how to be help'd.

21 Mar. c. 13. sect. 2.

Want of an Averment how help'd.

4 & 5 Ann.

21 Mar. cap. 13.

Administrator *durante Minori etate*, must aver the Nonage.

is under the Age of seventeen Years. For then (*viz.* at seventeen) there is an End of his Administration.

What shall be a sufficient Averment by Implication of the Life of a Man. 2 *Lut.* 1226 & 1258.

In an *Assumpsit* against an Heir upon a Promise to pay Money due upon his Ancestor's Bond, it ought to be averred, that the Heirs of the Obligor were expressly bound. 2 *Saund.* 136.

The Court will intend a personal binding against an Executor, if he had Assets, although it is not averred, but otherwise against an Heir if it be not expressly alledged. *Ibid.*

Of Averments in Declaration, see *Reg. placitandi*, 14, 15, 163.

Fait & adhuc existit paratus is a sufficient Averment of Life in a Court.

That the Life of Tenant in Tail, and Tenant for Life ought to be alledged. *Ibid.* 178.

Of an Averment *in facto*. *Ibid.* 267.

What is appatent to the Court by necessary Collection out of the Record, need not to be averred. *Ibid.*

One may not aver a thing contrary to the Condition of an Obligation; for the Condition is part of the Deed, which shall be supposed to be

made upon good Deliberation, and before Witnesses, and not be contradicted by a bare Averment. 7 Nov. 1650. B. S.

Against ministerial Acts done by an Officer, there may be an Averment, but not against what is done judicially, and by one as Judge. *Cro. Jac.* 12.

There can be no Averment against a Record. *Cro. Jac.* 12.

In an Ejectment the saying that the Defendant ejected him a *Termis prae. nondum finito*, implies, that the Tenant for Life is living, for otherwise the Term is determined. *Cro. Jac.* 622. pl. 13. 636. pl. 5. 637.

So where in a Declaration, *adhuc seifitus existit*, implies his Life. *Dyer* 304.

That after a Verdict no Judgment shall be staid or revers'd for want of an Averment of any Life or Lives of any Person or Persons, so as upon Examination the said Person be proved to be alive.

21 *Jac. cap.* 13. sect. 2. See *Keb.* 1 Part 176. pl. 137.

For want of an Averment, where help'd. See the Statute 4 & 5 *Anna.* For Amendment of the Law.

Where a Cause of Action is given to the Testator, and he dies, an Administration, *cum Testamento annexo*, is granted *durante Minori etate* J. S. Here the Plaintiff must aver in his Declaration, that J. S.

is under the Age of seventeen Years. For then (*viz.* at seventeen) there is an End of his Administration.

There

Averment.

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There needs no Averment of Performance of a Promise against a Promise, because each Party hath an Action. 1. Lev. 87.

Needs no Averment of Performance of a Promise against a Promise.

No Averment shall be admitted out of a Will that concerns Land, which ought to be in Writing.

No Averment out of a Will for Lands.

5 Rep. 68. 4.

See many Things under this Head in the Table to Keble's Reports, 1, 2 & 3 Parts.

Avowry.

Damage Feasant.

Justification.

See Property.

Replevin.

Seisin.

Avowry is where one takes a Distress for Rent, or other Thing, and the other sueth a Replevin; then he which hath taken it must justify for what Cause he took it; and if he took it in his own Right, he must shew it, and avow the taking; and if in the Right of another, he must then make Conusance as Bailiff. Terms of the Law, 38. a.

Avowry and Conusance, what.

If one make an Avowry for two Causes, and can maintain his Avowry but for one of them, yet it is a good Avowry. 21 Car. B. R. For thereby it appears he hath good Cause to distrain.

Avowry for two Causes; to maintain one is sufficient.

One Avowry may be made upon two several Titles of Land, though the Avowry is but for one Rent. 1650. For one Rent may depend upon several Titles.

One Avowry may be upon several Titles.

For the different ways of pleading in an Avowry at Common Law, and upon the Statute. Vide Raym. 257. 258.

Different Ways of pleading in an Avowry.

The Form of an Avowry for a Rent-Charge. 1. Sand. 196, 197.

Form of an Avowry for a Rent-Charge.

That if an Avowry be made for Rent, and it appears by the Parties own shewing, that part of it is not yet due; yet the Avowry is good for the Residue. Ibid. 285, 286.

Avowry for Rent, and Part not due; yet good for the Residue.

But if the Avowant had Title only to two Parts, the Avowry abates.

Avowry for Rent and *Nomine Penae*, where good for one, and ill for the other.

Avowry must be upon the Tenant of the Land, by 21 H. 8. cap. 19.

the Land; so it is not material what Estate the Tenant hath if he occupies the Land. *Moor, Case 1238.*

What Remedy Recoverors have to recover their Rents, Services and Customs, &c.

7 H. 8. cap. 4. sect. 2, 3.

very had not been, and shall recover their Costs and Damages. 7 H. 8. cap. 4.

Seisin within 50 Years must be alledged in an Avowry.

32 H. 8. cap. 2:

Avowry may be upon the Land only, without naming his Tenant. 21 H. 8. cap. 19. Sect. 3.

How Seisin shall be alledged in an Avowry.

What must come from the other side.

An Avowry is in the Nature of a Count, and must be certain, and contain sufficient Matter.

tion, wants Form, or omits Circumstances of Time, Place, &c. there the Plea of the other Party may salve such Imperfections, but cannot supply want of Matter of Substance. 7 Rep. 25. a. See 5 Mod. 564. &c.

An Avowant shall not be driven to alledge Seisin within the Time of the Statute of Limitations.

Avowry for Rent before all was due, held

But if it appears that the Avowant had Title only to two Parts of the Rent for which he avows, the whole Avowry shall abate. *Ibid.* 286.

Avowry for a Rent and a *Nomine Penae* together, without alledging any Demand of the Rent, is good for the Rent, though ill for the *Nomine Penae*. *Ibid.* 286.

After the Statute of 21 H. 8. cap. 19. the Party is to avow upon the Land; and then it is not material what Estate the Tenant hath, if he occupies

the Land; so it is not material what Estate the Tenant hath if he occupies the Land. *Moor, Case 1238.*

Where a common Recovery is suffered, the Recoverors, their Heirs and Assigns may distrein for Rents, Services and Customs, and make Avowries for the same as those Persons against whom such Recovery is, should have done, if the said Recovery had not been, and shall recover their Costs and Damages. 7 H. 8. cap. 4.

In an Avowry for Rent, Seisin must be alledged to be within fifty Years * before the making of the Avowry or Conu-
fance, per 32 H. 8. c. 2. v. *Postea*.

* Note, although the printed Statute-Book says fifty Years, yet Co. Litt. 268. b. and 8 Rep. 65. a. and other Books reciting the Statutes of 32 H. 8. cap. 2, and 21 H. 8. c. 19.

say forty Years, *ideo* Quare the Parliament-Roll.

The Lord need not avow upon any Person in certain, yet he must alledge Seisin by the Hands of some Tenant within forty Years. 21 H. 8. cap. 19. Co. Litt. 268. b. The Avowant shall recover his Damages and Costs by 21 H. 8. cap. 19. sect. 3.

I conceive that the Lord need not in his Avowry alledge Seisin by the Hands of any particular Tenant by Name within forty Years, but generally to alledge Seisin, and it must come on the other side to say, *Ne unques seisie deins 40 ans.* See 8 Rep. 65. a. 9 R. 36. a. at *Nota Lecteur Cro. Car.* 83. 214.

An Avowry, which is in the Nature of a Declaration, ought to contain sufficient Matter, whereupon there may be Judgment to have a Return: But if the Avowry, or any Declaration or Replication, wants Form, or omits Circumstances of Time, Place, &c. there the Plea of the other Party may salve such Imperfections, but cannot supply want of Matter of Substance. 7 Rep. 25. a. See 5 Mod. 564. &c.

An Avowant shall not be driven to alledge Seisin within the Time of the Statute of Limitations, but that must be shewn on the other Side. 8 Rep. 65. a.

The Defendant avowed for Rent, Part whereof was not due till three Months after the Avowry, and upon a Verdict and Judgment for the Avowant,

ant, it was reversed by Writ of Error for that Reason. 5 Mod. 353. to 367.

The Difference between an Avowry and a *Quo Warranto* is, That in an Avowry the Avowant is not compelled to shew his Title to his Franchise, but only to say generally, that he hath such a Franchise; but in a *Quo Warranto*, he must shew it particularly. 9 Rep. 29. b.

Not to shew his Title, to his Franchise.

The Defendant avows, that he was possessed of a Term still in being, and leased it to the Plaintiff. This is naught; for although *Possessionatus fuit* be good in Debt for Rent, yet it is not in Replevin: For in Replevin, the Avowant must set forth his Title how he came possessed. 10 W. B. R. Lutr. 1165. 2 Mod. 70, 71. See Title Damage Feasant.

It is not sufficient to say *Possessionatus fuit*; but must set out his Title.

In Trespass, the Defendant justified under a Presentment in a Court-Leet, without a Warrant from the Steward, it is naught: But in an Avowry, as Bailiff to the Lord, there needs not to be alledged, any Warrant or Precept from the Steward. The Reason is, In Trespass, it is sufficient to justify the Officer that there was such a Presentment and Amercement; because this Action tries the Authority: But in Replevin, the Suit is not so much for Damages, as to try the Right; and there it is not enough to set out an Authority, but must make out a Right. *Spamer's Rep.* 61, 62. See Title Justification.

Where, in Trespass, the Defendant must justify under a Warrant.

Need not in Replevin.

In a Replevin the Defendant may avow or justify at his Election; but if he justifies, he cannot have a Return, as he shall have if he avows. 3 Lev. 204, 205.

He may avow or justify. But if he justifies, he cannot have a Return.

In an Avowry the Defendant says, That the Property is in a Stranger, *absque hoc* that they were the Plaintiff's; this is good, either in Bar or Abatement; and the Defendant need not to avow for the Return of the Goods; they not being the Plaintiff's, the Avowant is to have a Return. 2 Lev. 92. Cro. Jac. 519.

Travelling the Property is good, either in Bar or Abatement.

Avowry for Damage Feasant in his Common, but alledged no Damage to himself; this is naught: Because he cannot distrein a Stranger's Cattle without a particular Damage. 3 Lev. 104.

How Avowry for Damage Feasant must be.

The Defendant avows for Damage Feasant in his Freehold, it was objected that this was according to the Order of a Justification in Trespass, and not of an Avowry; but the Justices held the Avowry to be good. 21 H. 7. 12. b.

Damage Feasant in his Freehold is good in an Avowry.

One Tenant in Common cannot avow the taking of the Cattel of a Stranger, Damage Feasant, without making himself Bailiff or Servant to his Companion. *Trin.* 7. Car. 810.

How Tenant in Common must avow.

They may join in Debt for Rent, but must sever in an Avowry, because it is in the Reality. *Litt.* Sect. 316, 317.

Difference between Debt and Avowry.

How it must be for Fealty, Rent, and Suit of Court.

stors were seized of the Services, or any of them, within fifty Years: This is not good;

32 H. 8. cap. 2.

What Services may be traversed in an Avowry.

What Remedy, where the Lord encroaches.

In an Avowry all the Tenure alledged is material to be found, but in Trespass and Rescous, part will do.

For in an Avowry all the Tenure alledged is material, but in Trespass or Rescous, if any Part be found, it sufficeth. *Cro. El.* 799. pl. 49.

Who may plead *hors de son Fee*.

Who may plead in Abatement.

What Encroachment of Rent will bind in an Avowry, and what not.

cause the Deed must be produced upon the Avowry; but otherwise it is between Lord and Tenant. 10 Rep. 108.

Avowry for a Relief, how to be.

the Tenure *de Communi Jure*, and a Flower of it, and if separated from it, must be shewn of the other side. 3 Lev. 45.

The Defendant needs no more to aver his Avowry, than the Plaintiff to aver his Count.

therefore, as Plaintiff, he shall not aver his Avowry, no more than the Plaintiff shall aver his Count. *Bret & Rigden.* 1 Plow. 342 a. and 163. a.

Avowry may be without laying of any Seisin where there is a Deed.

Seisin by Tenant at Will, or for Years, shall not bind.

Avowry upon a Tenure of Fealty, Rent, and Suit of Court, the Plaintiff confesseth the Tenure, but says, That neither the Avowant nor his Ancestors were seized of the Services, or any of them, within fifty Years: because Fealty, Homage, and such casual Services, may not happen in fifty Years, and so out of the Statute of 32 H. 8. cap. 2. of *Limitations*, 3 Lev. 21.

Where and what manner of Services, or any of them, may be traversed in an Avowry; and what Remedy in Case the Lord encroaches and demands more Services than he ought. See *Woodfole and Mantle.* 1 Plow. from 94. to 96.

In an Avowry the Issue was, Whether the Plaintiff held by Fealty, Rent, and Suit of Court? The Avowry was for Rent, the Jury found that the Plaintiff held by Fealty and Rent only, and not by Suit of Court; this is found against the Avowant:

For in an Avowry all the Tenure alledged is material, but in Trespass or Rescous, if any Part be found, it sufficeth. *Cro. El.* 799. pl. 49.

A Stranger to an Avowry shall plead nothing but *hors de son Fee*, or what doth tantamount; but the right Tenant, although a Stranger to the Avowry, being made a Party, may plead in Abatement of the Avowry. 9 Rep. 20 b.

Encroachment by the Donor upon the Donee, or Lessor upon the Lessee, shall not bind in an Avowry, as it shall between Lord and Tenant, be-

cause the Deed must be produced upon the Avowry; but otherwise it is between Lord and Tenant. 10 Rep. 108.

An Avowry was for a Relief upon the Tenure of Fealty, Rent, and Suit of Court, and good, without mention of the Relief; because it is Parcel of

the Tenure *de Communi Jure*, and a Flower of it, and if separated from it, must be shewn of the other side. 3 Lev. 45.

The Defendant need not aver his Avowry with an *hoc paratus est verificare*; because the Defendant in his Avowry is Actor, for he shews his Matter, which is a Count, and is to have a Return; and

therefore, as Plaintiff, he shall not aver his Avowry, no more than the Plaintiff shall aver his Count. *Bret & Rigden.* 1 Plow. 342 a. and 163. a.

A Man makes a Gift in Tail rendering Rent, he may avow without laying of any Seisin, because the Deed and Reversion gives him a sufficient Privy. 8 H. 6. 18.

Seisin of Services by the Hands of Tenant at Will, shall not bind the Tenant. 8 H. 6. 1. 7. Nor by the Hands of Lessee for Years. 2 H. 6. 2. b.

A Rent-Charge was granted to the Testator for one hundred Years, if he lived so long; the Executor can't distrein and avow for this Rent by the Statute of 32 H. 8. cap. 37. For that extends only to those who have Estates for Life or Inheritance, in which Case before the Executors had no Remedy; but here they may bring Debt. *Cro. Car. 471. pl. 4.*

Where a Rent is granted for so many Years, if *A. B. shall live so long*, the Executors can have only Debt for it, and can't distrein by 32 H. 8. cap. 37. which extends only to Estates for Lives and Inheritances.

How to enquire what Rent is due upon a Distress. 18 Car. 2. cap. 7.

How to proceed upon the Statute of 18 Car. 2. cap. 7. where the Plaintiff in Replevin becomes nonsuit before Issue joined, and where after Avowry or Conusance, or Verdict be against the Plaintiff. See in Title Inquiry and Inquisition.

How Executors to avow for Lord's Rent. 32 H. 8. cap. 37.

If Executors by 32 H. 8. cap. 37. avow for Arrears of Rent in Fee accrued to the Testator, they must shew, That the Land continues in the Seisin of the Tenant, who ought to have paid it, or in the Hands of some other who claims by or from him, according to the Statute. *Cro. Eliz. 547. See Co. Litt. 132. b.*

Where and who may plead *hors de son Fee*. *Danv. 655.*

Hors de son Fee.

Where the Seisin, and where the Tenure, shall be traversed. *Danv. 656.*

Where Seisin, where Tenure, traversable.

By the Statute of 4 & 5 Anne, it is Enacted, That any Tenant or Defendant in any Action or Suit, or any Plaintiff in Replevin, in any Court of Record, may, (with Leave of the Court) plead as many several Matters thereto as he shall think necessary for his Defence.

How many Pleas a Defendant or Plaintiff in Replevin may plead. 4 & 5 Anne.

For the general Learning upon this Head of Avowry, see *Danv. Abridgment*, Title Avowry, Fol. 644. to 657.

Auterfoits acquit, See { Appeal.
Bar in Action.
Indiament.

Authority.

Attorney.
Corporation.
See Entry.
Licence.
Power.

Authority, what.

An Authority is a Power which one Man or more gives to another Man or more for the doing of some Act.

How a Corporation must give Authority to act for them.

A Corporation cannot authorize any Person to act for them, but under their Common Seal.

Where a verbal Authority is sufficient to deliver an Ejectment-Lease.

A verbal Authority given by divers Plaintiffs in an Action of Trespas and Ejectment, to deliver a Lease of Ejectment upon the Land, though the Lease be only signed and sealed by them off from the Land (let in the Lease) but not delivered; yet it is a good Authority to deliver the Lease: So held in a Trial at the Bar between *Vanlore* and *Crook*. (*Mich. 1649. 7 Nov. B. S.*) For nothing passes from those that deliver the Lease by virtue of such Delivery; but from them that made the Lease, and their Authority, by Word, for another to deliver it, is as if they had themselves delivered it.

If I agree to a Stranger's Entry for me, it is good.

If a Stranger enters for me without my Authority; yet if I agree to it afterwards, it shall enure as much to my Benefit, as if he had entred by my Order.

He that doth less than his Authority, it is void:

Where a Man doth less than his Authority, it is void; when he doth more, it is good for so much as he had Authority to do, and void for the rest. *2 Lev. 61. See Co. Litt. 258. a.*

He that doth more, it is good for what he could do.

How to be executed when given by Deed, and when by Will.

Where an Authority is given by one Deed to many, there they must all join; contrary where the Authority is given by Will. *1 Leon. 60. Case 78.*

Where

Where a Deed in Execution of an Authority is signed and sealed, it ought to be sealed and subscribed with the Name of the Master who gave the Authority. 3 Lev. 139, 140.

A Special Authority must be pursued, or else the Party will be a Trespasser. *Lutw.* 1480.

A Man cannot make an Authority, Power or Warrant irrevocable, which is by Law in its Nature revocable. 8 Rep. 82. n.

If two submit themselves to the Award of J. S. one only may revoke the Submission, tho' bound in a Bond to stand to the Award; but he shall forfeit his Bond. *Danv.* 1 Part 670.

If two of the one Part and one of the other submit to the Award of J. S. one of the two may revoke the Submission without the other. *Ibid.*

What may be done by Letter of Attorney, and what not; and the Difference between a nude Authority, and an Authority coupled with an Interest. 9 Rep. 76, 77. See Titles Power, Attorney.

When a Man makes a Letter of Attorney to deliver a Writing, purporting a Lease, upon the Land, after the signing and sealing of it, he must in the Letter of Attorney recite that such a Writing purporting a Lease of such Land, &c. (not to say an Indenture of Demise) was by him signed and sealed, and so to authorize him to deliver it upon the Land. *Danv.* 665.

Where a Feoffment bears Date Sept. 10. and there is a Warrant of Attorney to deliver Seisin upon a Feoffment dated Sept. 11. this is void; for the Warrant was to deliver Seisin 11. Sept. *secundum formam Chartæ*, when there was no sufficient Feoffment: See *Lit. Rep.* 144, 145.

If a Letter of Attorney be made to three, *Conjunctim & Divisim*, to make Livery; and two make it, the third being absent, it is naught. 5 Co. 91. See *Co. Lit.* 181. b.

If a Warrant be made to three or any one of them, *Conjunctim & Divisim*, to arrest J. S. upon a Process, though this be joint and several, yet two of them may execute it, because it is in Execution of Justice, and shall therefore be more favoured than other things. 1 *Danv.* 666. So upon a Warrant to four, & *cui-libet eorum*. *Cro. El.* 913.

A Commission directed to six, four or two cannot be executed by three, because that is a judicial Act. *Noy* 47. 2 *Inst.* 380.

A Feme Covert without her Husband may execute an Authority. *Latch* 9, 10, 39, &c.

How Deeds executed by Authorities must be executed.

Authorities must be pursued.

A Man cannot make an Authority irrevocable.

An Authority given by two, is revocable by one.

An Authority given by two, is revocable by one.

What may be done by Letter of Attorney, and what not. Nude Authorities and Interests.

How an Attorney must deliver a Lease upon the Land.

Livery given by a Letter of Attorney of a mistaken Date, is void.

How to be made when it is to Three, *Conjunctim & Divisim*.

How taken where it is in Execution of Justice.

How, where it is a judicial Act.

A Feme Covert may execute an Authority.

Authority.

Diversity between naked Trusts or Authorities, and Authorities joined to an Estate:

Also Authorities created by the Party for private Causes, and created by Law.

vises his Lands to his Executors to be sold, the Survivor shall sell, because as the Estate, so the Trust, shall survive. *Co. Litt. 181. b.* and

21 H. 8. cap. 4.

makes Provision for others to sell, where some of the Executors refuse; but makes no Provision where some Executors die for the Survivors to sell.

The Act must be done in the Name of him who gave the Authority.

So it is in Case of a Lease.

So also in Case of a Surrender.

But otherwise in Case of Executors.

Cannot sell by Attorney.

There are Diversities between naked Trusts or Authorities, and a Trust or Authority joined to an Estate or Interest: Also there is Diversity between an Authority created by the Party for private Causes, and an Authority created by Law for Execution of Justice. As for Example; A Man devises that his two Executors shall sell his Lands; if one of them die, the Survivor shall not sell; but if he had de-

vises his Lands to his Executors to be sold, the Survivor shall sell, because as the Estate, so the Trust, shall survive. *Co. Litt. 181. b.* and *113. a.* But when one Executor refused to sell, the other could not, until the *21 H. 8. cap. 4.* which

Where a Man hath an Authority to do an Act, he must do it in the Name of him who gave the Authority. *9 Rep. 76. b.*

So he that hath an Authority to lease for me: So he that hath an Authority to surrender for me a Copyhold. *1 Danv. 669.*

But if Executors have Authority to sell, they must sell in their own Names for Necessity, because he who gave the Authority is dead. *Ibid.*

They cannot sell by Attorney. *9 Co. Rep. 77. b.*

Award.

Attachment.
See Pleas.
Release.

An Award, what.

An Award is in the Nature of a Judgment or Sentence, in which there ought to be Plainness, and nothing left for Collection and Inference; for it ought to contain the Judgment of the Arbitrator himself, and not of another upon his Words. *Yelv. 98.*

If each Party submitting to the Award, hath Power by the Award to compel the other Party, either by Law or Equity, to perform the Award, the Award is good, altho the Party be thereby put to his Action: *Mich. 24 Car. 1. B. R.* Else it is not; for that is not binding in the Law, to the Performance whereof the Law cannot compel the Party bound. *2 Saund. 293. Pope and Bret.*

The Court will not suppose any Thing to be awarded, that is not submitted unto, except the contrary be made appear. *10 Feb. 1650. B. S.* For this were to suppose the Arbitrators to do Injustice, by exceeding their Authority, which the Charity of the Law will presume no Man will do.

An Arbitrament under the Hand and Seal of the Arbitrator is such a Specialty as is not limited by the Statute of *21 Jac. 1. cap. 16. Of Limitation of Actions.*

The Intent of an Arbitrator cannot be explained by Averment. *Dyer 242. b. 1 Rot. R. 263. Hob. 50.*

To an Award five Things are requisite; 1. Matter of Controversie; 2. A Submission; 3. Parties to the Submission; 4. Arbitrators; 5. Giving up of the Award. *Hardr. 44.* Where also see much good Matter about Awards.

No Relief in Chancery against an Award made without an Order of the Court, unless for Corruption, exceeding Authority, or the like. *Chanc. R. 279.* The Court will decree no Award to bind an Infant. *Ibid. 280.*

The Condition was to make an End of all Matters until the fourth of September, and they made their Award of all Matters till the third of September. *Curia.* It is well enough; there shall not be intended that there were any other Matters depending, unless they had been shewn. *Cro. El. 858. pl. 26.*

Where an Award seems to extend to more than in the Submission, yet the Words *de & super premissis* restrain it to the Thing submitted. *Cro. El. 861. pl. 37.*

It is a stated Rule in Awards to be *de & super premissis*, that if the Words used in them be in their own Nature more comprehensive, and so extensive to things not within the Submission; yet they shall be intended that there was no other Matter between the Parties for them to lay hold on, but what was submitted, unless the contrary be shewn; so if the Words are less comprehensive than to take in all the Matter of the Submission, yet it shall be intended that no more was in Contro-

If each Party hath Power to compel the Performance of the Award, it is good; otherwise not.

The Court will suppose nothing to be awarded but what is submitted to Arbitration; unless the contrary appear.

Arbitrament under Hand and Seal, not within the Statute of *1 Jac. 1 cap. 16.*

No Averment can explain the Arbitrator's Intent.

What Things are requisite to make a good Award.

Where the Chancery relieves against an Award, and where not.

No Award shall bind an Infant.

To make an End of all Matters to the 4th of September, and they make an End of all to the 3d of September, and good.

Unless the contrary shewn.

De & super premissis restrains the Award to the thing submitted.

A stated Rule upon the Words *de & super premissis*.

versie than the Words comprehended, unless the contrary be shewn.
Mod. Cases 232.

How Awards shall be made, and prosecuted by the 9 & 10. *M. 3.* cap. 15.

By the Statute of the 9 & 10. *W. 3.* cap. 15. it is enacted, That after the 11th of May 1898, all Merchants, Traders, and others, desiring to end any Controverſie, Suit or Quarrel (for which there is no other Remedy but by Personal Action or Suit in Equity) by Arbitration, to agree, That their Submission of the Suit to the Award or Umpirage of any Person or Persons, should be made a Rule of any of his Majesty's Courts of Record, which the Parties shall choole, and to insert such their Agreement in their Submission, or the Condition of the Bond or Promise. And upon producing an Affidavit of such inserting, and upon ordering and filing such Affidavit in the Court so chosen, the same may be entred of Record in such Court: And a Rule of Court shall thereupon be made, That the Parties shall submit to, and finally be concluded by such Arbitration or Umpirage: And in Case of Disobedience thereto, the Party neglecting or refusing to perform the same, shall be subject to all the Penalties of contemning a Rule of Court: And the Court on Motion shall issue Process accordingly, which shall not be stop'd or delayed, unless it appear on Oath, That the Arbitrators or Umpire misbehaved themselves, and that such Award was corruptly or unduly procured: in which Case, such Arbitration or Umpirage shall be void, and set aside by any Court of Law or Equity, so as such Corruption, or undue Practice, be complained of in the Court where the Rule was made for such Arbitration, before the last Day of the next Term after such Arbitration made and published to the Parties.

Note, This Statute extends only to Submissions of such Matters, for which there is no other Remedy but by Personal Action or Suit in Equity. See *Danv.* 513, 514.

An Award to pay Money at the House of a Stranger, where good, and where not.

An Award that is made, that one of the Parties who submitted themselves to the Award, shall pay Money in the House of a Stranger, is not good unless he may come to the House, and be no Trespasser; but if he cannot, then this is to award him to do a Thing which will make him a Trespasser, and so liable to an Action, which is unreasonable. *Mich. 22. Car. 2. B. R.* But between *Taverner and Skingle. Cro. Car. fol. 266.* it was held otherwise after a long Debate, the Stranger's House there being a common Inn; but if the Award be to pay the Money in the House of one of the Parties that submitted to the Award, such an Award is good; for it implies a Licence from the Party for him to pay it there.

Note, There is a Diversity where it is to pay in the House, and where at the House of *J. S.* for if he cannot get Leave to pay it in the House, he may go to the Door, and pay it there, without being a Trespasser. *Godb. 255. 1 Rot. R. 6. 2 Bulst. 40.* But if it be to be paid in or at the House of *J. S.* it is good either *Way. 3 Lev. 153.* See *Alegn 87.*

An Award to pay Money at the Scriveners House who drew the Award, is good; because he, drawing of it, shew'd his Consent therunto; *Ym. 34. Cro. El. 809. pl. 12.*

An Award to pay the Plaintiff's Charges, and the Plaintiff gave in a Bill thereof, which came to 40 s. This is good by the Bill delivered in. *3 Lev. 18.*

A Release of all Demands, awarded generally, without fixing of any Time, is intended until the Time of the Submission, and good; but of all Demands at the Time of the Award, is void, because it is out of the Submission. *3 Lev. 188. 344. 3 Mod. 264. See Aleyn 86, 87.*

But where it is for Payment of Money at such a Day and Place, and to release to the Date of the Award, it is good for the first Part, and void for the last. *Cro. El. 809. pl. 12. Aleyn. 86, 87.*

If a Man be bound to perform the Award of J. S. concerning divers Things, so as the same Award be made before such a Day; here, if the Award be not made of all the Things, the Obligor is not bound to perform it in any Part: But if it be to stand to the Award of J. S. of divers Things to be made and delivered before such a Day, if he makes an Award of any Parcel, and not of the rest, the Obligor ought to perform that which is awarded; for the Submission is not Conditional, as in the first Case. *Cro. El. 838, 839. pl. 14. See Cro. Jac. 200. pl. 31, 355.*

Where the Words of the Submission are, *ita quod* they make their Award of all Differences; there the Submission is conditional, and, says the Plaintiff's Counsel, *Ita quod* restrains the Arbitrators in Point of Time only, but not the general Authority given by the Submission. *Lutw. 1628. See more Cases upon Ita quod. Darv. 517.*

An Award made of one Side only, is void. *Hob. 49. 2 Saund. 190. 8 Rep. 98. a.*

An Award to pay 40 s. and nothing awarded for him to have, is a void Award. *Cro. El. 904. pl. 8.*

Where an Award is made that the Defendant shall pay the Plaintiff 10 l. in Satisfaction of all Trespasses made by the Defendant to the Plaintiff; this is a good Award, and not an Award of one Side, as was insisted on; because by the Payment of the 10 l. he shall be quit of the Plaintiff of all Trespasses; and it is a good Bar against him. *Cro. Jac. 354. pl. 9.*

Where the Defendant pleads an Award, if he doth not plead an Execution of it, it is naught. *2 Roll. 455. 2 Saund.*

In all Actions where Damages only are to be recovered, Arbitrament or Accord, with Satisfaction, are good Pleas; *6 Rep. 44. a.* and may be pleaded before the time of the Performance. *Dyer 75. b. 26.*

To pay Money at the Scriveners House, who drew it up, is good.

To pay the Plaintiff's Charges.

A Release is awarded, how to be.

A Release is awarded, how to be.

An Award good for the Payment of Money, void for the Release.

An Award good for the Payment of Money, void for the Release.

How the Award for divers Things shall be, where the Submission is Conditional, and where not.

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How the Award for divers Things shall be, where the Submission is Conditional, and where not.

Where

Where Tender in an Award lost the Sum awarded.

To acquit each other, good.

It may be void in Part, and good in Part.

trators by the Parties.

A Bond to be given with Sureties is naught.

Also for not saying of what Penalty.

77. b. See *Cro. El.* 432. pl. 40.

An Award to find Sureties, how it shall be.

To give Security for the Payment of 10 l. and says not what, void for Uncertainty.

A Bond entered into without Sureties, is a good Performance.

Because that Part of the Award for finding of Sureties is void, and is as if no such Award as that Part of it was made. *1 Leon.* 140. *Case* 194.

An Award that J. S. a Stranger, shall be bound, is void.

the Obligor is not bound to perform it, because it is out of the Submission. *Moor & Bedle.* 10 Co. 131. a.

Where the Thing awarded can't be done without a third Person, it is void.

award is void. *March* 19. *Mod. Cases* 489.

An Award referring to the Act of another is void.

That all Suits shall cease is a good Award.

An Award void for Uncertainty of what Penalty the Bond is to be.

Where the Sum that was awarded was lost by the Tender, it being a collateral Thing. *3 Lev.* 24. See *Mod. Cases* 35.

An Award that they shall acquit each other, is good. *3 Lev.* 18.

An Award may be void in some Part, and yet good in another Part, viz. If the Award makes an End of all the Differences submitted unto the Arbitrators by the Parties. *Pope and Bret.* 2 *Saund.* 293.

If an Award be, That a Bond shall be given with Sureties for the Payment of a Sum of Money; it is void as to that Part for the giving of Security, and also for not saying in what Penalty the Bond shall be, and good for the other. *2 Lev.* 6. *5 Rep.*

Upon an Award to find Sureties for the Payment of Money, the Defendant is not to find any Sureties, but to tender his own Bond. *3 Leon.* *Case* 91.

An Award that the Defendant should give Security for the Payment of 10 l. is void for Incertainty, not shewing what Security he should give. *Cro. Jac.* 314. pl. 16.

Also, where such an Award is made, yet a Bond entered into without Sureties, is a good Performance of the Award. *Mich.* 5. *W. & M. Rol.* 166.

Because that Part of the Award for finding of Sureties is void, and is as if no such Award as that Part of it was made. *1 Leon.* 140. *Case* 194.

If an Award be, That one shall pay 10 l. to another, and that J. S. a Stranger shall enter into a Bond to pay it such a Day: This is void, as to the Entry into an Obligation by the Stranger, and

Where the Arbitrators award that one Party shall do a Thing which lies in his Power to do, and doth not do it, this is a Breach; but if they award a Thing to be done, which cannot be done without the Help of a third Person, there the Award is void. *March* 19. *Mod. Cases* 489.

An Award that the Defendant shall release all Actions, as J. S. shall advise, is a void Award, it referring to the Act of another. *Cro. El.* 726. pl. 59. *Cro. Jac.* 315. 585. *Hob.* 218.

An Award that all Suits shall cease is the same Thing as if said; shall ever cease. *Mod. Cases* 34, 35.

An Award, that the Defendant should enter into a Bond, that the Plaintiff and his Wife should enjoy such Lands; and held void for the Uncertainty

Award.

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certainty of what Penalty, and also because the Wife was no Party to the Submission. *5 Rep. 77. b. Cro. El. 432. pl. 40. Mod. Cas. 489.*

A Man is bound to stand to an Award, and afterwards by Deed, revokes the Power given by him to the Arbitrators (which he may do): This is a Breach of the Condition, in not standing to the Award. *8 Rep. 82. a.*

There were Differences between A. and B. and C. as Attorney for A. became bound in a Bond, with a Condition to stand to the Award of, &c. This Submission is good. *Trin. 9 W. Style 431. 1 Rol. Rep. 1.*

An Award, that a Thing shall be done to a Stranger, is a good Award, if it appears that the Parties who submitted to the Award have Benefit by the doing of it: For every Award is intended in Law to be made for the equal Benefit of the Parties that submitted unto it.

If an Award be good in any Part of it to all the Parties that did submit to it, and if it be broken in that Part that is good, an Action will lie for that Breach: For as to so much it shall be accounted a good Award, and is to be performed; and the rest of the Award, tho' imperfect, shall not vitiate that Part which is good. As if an Award be made, That the Obligor and a Stranger shall pay to the other Party 10 l. tho' it be void as to the Stranger, yet it is good against the Obligor, and he must perform it. *Mich. 10 Jac. B. R. Gray and Wicker.*

If an Award be good in Part, and void in Part, the Good shall be performed. *10 Rep. 131. And if Releases shall be awarded, they shall be taken to be mutual. 2 Lea 3.*

An Arbitrator cannot delegate or transfer the Power given him by the Parties that submitted to the Arbitration; for it is contrary to the Submission; but an Arbitrator may refer a ministerial Act touching the Arbitration to another: For such Act shall be accounted to be done by the Arbitrator himself, and the other that did the Thing shall be accounted but his Servant.

An Award was to be made by one B. before such a Day, or else to the Umpirage of such Person as he should choose to be made before such a Day: B. before the Day named C. for Umpire, who refused, and then he named D. Umpire, who made the Award; and whether or no it were good was the Question: And by three Judges against the Chief Justice, held to be a good Award. *1 Mod. 457, 458.*

Also because the Wife was no Party to the Submission.

Condition to perform an Award, Revocation of Power is a Forfeiture of the Bond.

A Stranger bound, that A. shall stand to the Award.

1 Rol. 248, 255.

Where an Award that a Thing shall be done to a Stranger, is good.

If an Award be good in any Part, it will hold.

As if an Award be made,

Tho' void to the Stranger, shall be good against the Obligor.

An Award good in Part, and void in Part, the Good shall be performed.

An Arbitrator cannot assign over his Power to another.

The first who was named to be Umpire refused, and then another chosen, who awarded; and held good.

Arbitrators make a void Award, and the Umpire a good one.

Umpire within his Time makes his Award, the Umpire's Award shall stand; because the void Award of the Arbitrators is no Award. *Trin. 34 Car. 2. B. R.*

A Bond cannot be submitted.

Cannot make an Award of a Freehold.

Hard. 43, 44, 45. See *Danv. 513.* Nor of a Lease, 514. But of Matters relating to Land, they may.

De premissis in Conditione shall be intended all Matters till the contrary appears.

Where the Submission is without Limitation of Time, and where till the Time of the Award.

Where the Impossibility of the Act to be done, will be a good Excuse:

And where not.

How when one Partner only submits.

Awards void for Uncertainty.

certainty of the Sum he should pay, and cannot be help'd by Averment. *2 Saund. 292.*

An Award may be pleaded where an Accord may.

What Award shall be a good Bar to the Action

Difference between Accords and Arbitraments.

Where an Award is to be made by Arbitrators, and that if they do not make it by such a Day, then by an Umpire; the Arbitrators before the Day make a void Award: And afterwards the Umpire's Award shall stand; because the void Award of the Arbitrators is no Award. *Trin.*

A Bond is not submittable to an Award, because it is a Debt certain; but it may be submitted with other Matter. *1 Lev. 293. Cro. Eliz. 422. pl. 18.*

Arbitrators cannot make an Award of a Freehold, so as to adjudge the Land of one to another: *See Danv. 513.* Nor of a Lease, 514. But of Matters relating to Land, they may.

An Award *de premissis in Conditione mentionat.* shall be intended to be made of all Matters referred, until the contrary be shewn on the other Side. *8 Rep. 98. a.* A Diversity was taken where the Award is generally without Limitation of Time, and where till the Time of the Award; for in the last Case, if new Controversies are averred, the Award is void. *3 Lev. 188. 344.*

If a Thing be possible, and afterwards by the Act of God becomes impossible to be done, that will be a good Excuse. *Jones 179. Win's Case.* But if the Act of a Stranger interposes, which makes the Thing impossible, that is no Excuse. *22 E. 4. 27. Cro. Eliz. 815.*

If a Partner on the behalf of himself and the other Partners, submits, &c. and promises to perform the Award; and thereupon they are awarded to pay Money: Tho' the other Partners are not bound thereby, yet he that submitted must perform it. *2 Mod. 227, 228.*

An Award to pay so much as is due in Conscience, is void. *Style R. 28.* And also an Award to pay for certain Days Work is void for the Uncertainty of the Sum he should pay, and cannot be help'd by Averment. *2 Saund. 292.*

It is a general Rule, That where an Accord with Satisfaction may be pleaded, an Award may be pleaded. *See 6 Rep. 43. b. See 9 Rep. 78.*

When any thing is awarded to be paid in Satisfaction of the Action, it is a good Bar to the Action. *Fitz. Abr. Arbitrament 21.*

An Accord must be executed before the Action brought, but in Cases of Arbitrament the Law varies; for Arbitrators are indifferent Judges elected by the Parties, and may adjudge Trespasses to be equal,

Award.

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equal, and that each Party may be acquitted and discharged against the other: Also if one be to pay a Recompence in Money or other Things, an Action lies; but it is not so in the Case of an Accord. See Title Accord. And yet in Arbitraments there ought to be something done by each Party to the other commodious in appearance. *Dyer 256. 4.*

Each to be acquitted against the other.

What ought to be done in Arbitraments.

other commodious

If the Defendant refuses to perform the Award at the Day, this Award is no Bar of the Action. *Br. Arbitrament 12. & 5.*

Refusing to perform the Award, is no Bar to the Action.

The Defendant pleads, That the Arbitrators *non deliberaverunt* their Award *in Scriptis*, and held naught; for that it should have been, *non reddiderunt* their Award *in Scriptis*. *New Benl. 97. pl. 143.*

How to plead an Award.

In Debt upon a Bond for Performance of an Award, the Defendant cannot plead Performance generally, but must shew the Award, and how he has performed it. *Moor 3. pl. 9. 2 Bulst. 93. Danv. Abr. 576.*

How Performance of an Award must be pleaded.

Debt upon a Bond conditioned to perform an Award; the Defendant pleads *nullum fecerunt Arbitrium*; the Plaintiff replies, and shews the Award; he must also shew the Breach, for without that he hath no Cause of Action. *Yelv. 152.*

Where the Plaintiff must in his Replication shew a Breach of the Award.

For the Learning concerning Awards, see *March's Action for Slander*. See also the *General Abridgment*, from *Fol. 513. to Fol. 577.*

Special Bail are taken before a Justice of the Peace, and when accepted, they are full.

One is returned not before the Justice, but before the Sheriff, and is not full.

That the Defendant shall perform the Judgment of the Court, and what remains now to be done.

When and how Bail are taken before the Court, and what remains now to be done.

The putting in of Bail, and what remains now to be done.

Bail before the Court, and what remains now to be done.

Bail before the Court, and what remains now to be done.

Bail before the Court, and what remains now to be done.

Bail and Bail-Bonds.

Attorney.

Capias ad Satisfaciendum.

Discharge.

Habeas Corpus.

See Obligations.

Recognizance.

Reddidi &c.

Scire Facias.

Sheriff.

A Common Bail, what.

A Common Bail is John Doe and Richard Roe, which Bail-Piece is filed with the Clerk of the Files of Common Bails in B. R.

Special Bail are taken before a Judge, or by Commissioners in the Country, and when accepted, they are filed.

One in Execution not bailable till *Audita Querela* brought.

One taken in Execution is not bailable by Law, unless an *Audita Querela* be brought. (*Hill. 21 Car. 1. B. R.*) For Bail is put in to secure the Plaintiff, that the Defendant shall perform the Judgment of the Court; and now the Law hath determined the Matter; and what remains now is only for the Defendant to perform the Judgment; and for the not performing it he lies in Execution.

When and how Bail upon a Writ of *Habeas Corpus* to be put in.

No Bail shall be put in upon a Writ of *Habeas Corpus* before the Writ be returned; and every Attorney of this Court who shall put in any special Bail before any Judge of this Court, at the time of the putting in of such Bail, shall deposite into the Hands of the Judge's Clerk of this Court, before whom such Bail is put in, the due Fee for filing of that Bail, viz. For every Bail upon a Writ of *Habeas Corpus* 4 s. 10 d. and for every Bail upon a *Capi Corpus* 2 s. 6 d. and the Judges Clerks in whose Hands the Bails are put in, within six Days after the End of every Term shall give a Note in Writing to the Secondary of this Court of all the Bails of the Vacation and precedent Term so put in, together with the Names of the Attorneys who put in those

those Bails, and they shall pay to the said Secondary the aforesaid Fee by him received for those Bails in manner aforesaid. *Per Cur. Pasch. 29 Car. 2. R.*

One that had been indicted thirteen Years before for Suspicion of Murder in poisoning his Servant, was brought into Court by a *Habeas Corpus*, and was bailed to answer the Fact. (21 *Car. B. R.*) This was permitted by the Court to be done, because the Prisoner had been so long in Prison without any Prosecution of the Indictment against him, in favour of Liberty.

One indicted for Suspicion of Murder, brought into Court by a *Habeas Corpus*, and bailed.

The Prisoner had been so long in Prison without any Prosecution of the Indictment against him, in favour of Liberty.

Though one that is in Execution, do bring a Writ of Error to reverse the Judgment given against him, yet the Court will not bail him, altho' there appear unto them very apparent Error in the Record. (21 *Car. B. R.*) For the bailing of him in such a Case would amount unto a discharging of the Defendant out of the Execution.

The Court will not bail one in Execution, though he bring his Writ of Error, and there be apparent Error in the Record.

The Bail upon a Writ of Error cannot render the Party in their Discharge, because they are bound in a Recognizance that the Party shall prosecute the Writ of Error with Effect, and pay the Money if Judgment be affirmed.

The Bail in a Writ of Error cannot discharge themselves by rendering the Party.

The Bail may bring in the Body of the Party for whom he was Bail, at any time before the Return of the *alias Scire Facias*, and render him in Discharge of his Bail, and that will discharge him; but he must take care to see the Bail-Piece vacated by the Master of the Office after the *Reddidit se*.

When the Bail may discharge themselves by bringing in the Body.

The Court did take Bail for a Prisoner, against whom an Appeal or Murder was brought, because he did not flee for the Murder supposed, and had been formerly indicted for this Murder, and acquitted upon the Indictment. (Mich. 22 *Car. B. R.*) Upon which Presumptions they conceived he was not guilty, else they would not have bailed him.

Where the Court will bail in an Appeal of Murder.

If an Action be brought against Husband and Wife, and the Husband only is arrested; yet the Husband must put in Bail for his Wife, if the Name of the Wife be in the Writ; else he is not bound to put in Bail for her. (22 *Car. B. R.*) For it is the Writ that warrants the Bail.

Action against Husband and Wife; Bail must be put in for the Wife if she be named in the Writ.

But where the Wife is arrested, she shall not be compelled to cause Bail to be put in for her Husband, but she may file the Common Bail, and have a *Superfedeas* to discharge her, provided the Writ did not require special Bail.

What the Wife must do in case she be arrested.

One may deposite a Sum of Money in Court in Lieu of Bail, if the Court please, and they may thereupon order the Plaintiff to wave other Bail, (22 *Car. B. R.* and *Trin. 23 Car. B. R.*) if the Sum deposited be sufficient to satisfy the Plaintiff in case the Trial pass for him; for then the Plaintiff can suffer no Inconvenience by it; for the

Court may give Leave to deposite Money in Lieu of Bail.

Court may order him to take the Money deposited for his Satisfaction after such Trial had.

Common Bail cannot be filed after the Roll marked for Special Bail. Otherwise if not marked, nor Cause of Action expressed in the Writ.

After the Roll is marked to have Special Bail, Common Bail ought not to be filed; but if the Roll be not marked for Special Bail, nor the Cause of Action expressed in the Writ, Common Bail may be entred. (*Hill. 22 Car. B. R.*) For nothing appears to the Court that Special Bail was required, and then Common Bail is to be filed of course. See *postea*.

How Common Bail to be filed.

Every Attorney of this Court who shall appear for any Defendant in any Action wherein Special Bail is not required, shall file Common Bail for the Defendant within six Days after the End of the same Term whereof he appeared; and every Attorney of this Court, who shall put in any Special Bail before any Judge of this Court *de bene esse*, upon a *Capi Corpus*, shall give notice thereof forthwith to the Plaintiff or his Attorney; and if the Plaintiff shall not except against that Bail within twenty Days after Notice thereof given to him or his Attorney, then upon Oath made in Writing of the said Notice on the back of the Bail (for which Oath no Fee shall be taken) that Bail shall be filed by the Defendant's Attorney within four Days after the End of the said twenty Days: And that every Attorney of this Court, who shall put in any Special Bail before any Judge of this Court *de bene esse* upon a Writ of *Habeas Corpus*, if the Plaintiff shall not except against the Bail within eight and twenty Days after the putting in of the said Bail, then that Bail shall be filed by the Defendant's Attorney within four Days

Twenty eight Days allowed to the Plaintiff to except against Bail.

after the End of the said eight and twenty Days, upon pain that every Attorney making Default, or in not giving notice as aforesaid, or in not filing the said several Bails, or any of them, in Form as aforesaid, shall forfeit and pay to the Box of this Court for his first Offence the Sum of 5 s. and for his second Offence he shall be put out of the

Judges Clerks to give Notes to the Secondary of all the Bails of the precedent Term.

Roll of Attorneys of this Court: And it is further ordered, (to the intent that Bails shall be duly filed) That the Judges Clerks of this Court, in whose Hands the Bails so taken *de bene esse* shall remain, shall within six Days after the End of every Term give a Note in Writing to the Secondary of this Court of all the Bails of the precedent Term so put in, and then remaining in their Hands, together with the Names of the Attorneys who put in the Bail, and the Day of the putting in of the same. 16 Car. 2.

Stamp-Duty on Bail-Pieces.

Note, That by the Act 5 & 6 W. & M. for stamping of Paper and Parchment, 'tis enacted, That every piece of Parchment, &c. on which are ingrossed or written any Common Bail, to be filed in any Court, and for any Appearance that shall be made upon such Bail, is charged 6 d. (and by a later Act 'tis made 1 s.)

Which

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Which Appearance or Common Bail, the Defendant shall cause to be entred or filed within eight Days after the Return of the Process on which the Defendant was arrested, on Penalty of 5 l. to be paid to the Plaintiff, for which the Court shall immediately award Judgment, and the Plaintiff may take out Execution. *Note*, The Stamp of a Special Bail-piece is now 2 s.

Common Bail to be entred within eight Days after Return of Process on Penalty of 5 l.

Stamp of a Special Bail-piece.

One that stands indicted for Felony, or for Forgery, ought not to be bailed, until he have pleaded to the Indictment. (*Pasch. and Trin. 23 Car. B. R.*) For the Parties shall be conceived to be guilty of the Crime until they plead; and there is difference between Criminal Offences and Civil Actions.

One indicted for Felony or Forgery not bailable before he has pleaded.

One committed by a Justice of Peace, upon the Statute for having two Wives, and appearing in Court upon the Return of his *Habeas Corpus*, was bailed upon the Prayer of his Counsel. *Trin. 23 Car. B. R.*

Bail taken for having two Wives.

Where the not filing of Common Bail will make Error in the Record, there the Court will compel the Plaintiff to accept of it. (*Trin. 23 Car. B. R.*) viz. In such Cases where Common Bail was to be accepted.

Where the Court will compel the Plaintiff to accept of Common Bail.

According to the ancient Rules and Practice of this Court, no Attorney ought to be Bail for his Client in any Action in this Court: The Court doth this in favour of Attorneys, who being in Town in Term-time, would be solicited by their Clients to be Bail for them, which might many times prove their Ruin.

No Attorney to be Bail for his Client.

One committed for Felony, and brought into this Court by his *Habeas Corpus*, may not be bailed with less than four Sureties. (*Hill. 23 Car. B. R.*) For the Crime being capital, requires extraordinary Bail, in respect of the Kingdom's Concernment.

Felony not bailable with less than four Sureties.

Though one be assigned by the Court to be of Counsel on Record for a Prisoner that stands indicted of Felony, yet he ought not to move to have the Prisoner to be bailed. (*Pasch. 24 Car. B. R.*) For he must not move for Things against Law.

Counsel assign'd by the Court for one indicted of Felony, ought not to move to have him bail'd.

One single Judge will not bail a Prisoner in a difficult Case, but will advise with his Companions. (*Pasch. 23 Car. B. R.*) So cautious are they not to do any thing against Law.

One Judge will not bail a Prisoner in a difficult Case.

One that is in Execution, in Custody of the Marshal of this Court, is not compellable to find Bail if another Action be brought against him; but if he be in the Prison of the Fleet in Execution, and an Action be brought against him in this Court, he must either be removed and committed unto the Custody of the Marshal of this Court, or else he must put in Bail to the

One in Custody of the Marshal, in Execution, not compellable to find Bail to another Action. But if Action be brought against a Prisoner in the Fleet, he must either be removed, or put in Bail.

the Action. (*Trin. 24 Car. B. R.*) For when he is in Custody there needs no Bail to bring in his Person, for he is intended to be always in Court ready to answer the Party; but he that is a Prisoner in the *Fleet*, though he be in Prison, yet this Court can have no Certainty to bring in his Person to appear here; and therefore he must either be committed here or put in Bail.

He that brings a Writ of Error, must put in Bail to prosecute, and pay what is due, if Judgment be affirmed.

Before a *Superfedeas* be issued forth upon a Writ of Error brought, he that brings the Writ of Error in some Cases limited by several Statutes, ought to put in Special Bail to prosecute the Writ with Effect, and pay what shall be due, if the Judgment be affirmed. (*Trin. 24 Car. B. R.*) Because thereby he stops Execution, and so delays the Plaintiff, and puts him to extraordinary Charges.

'Tis not sufficient to mark the Roll, but it must appear in the Writ that Special Bail is required.

It is not sufficient for the Plaintiff's Attorney only to mark the Roll for Special Bail, but it must appear also in the Body of the Writ to give the Defendant's Attorney Notice that Special Bail is required to the Action. (*Mich. 24 Car. B. R.*) For the Roll may be marked without Notice, and so he know nothing of it; and plain Practice is always the best and most beneficial for Plaintiff and Defendant.

When upon Bail put in, and Declaration delivered, the Defendant must plead to enter, and when to try.

Upon a Bail put in upon a *Habeas Corpus* returnable *immediate*, if it be in *Hill*, or *Trin.* Term, and the Declaration be delivered eight Days before the end of the Term, then the Defendant must plead to enter; but if it be in *Michaelmas* Term, and the Declaration be delivered before *Craftin. Anim.* or in *Easter* Term before *Mens. Pasch.* then the Defendant must plead to try the same Term. Per *Magistrum Livesay & alios*, *Pasch. 21 Car. 2.*

Bail taken *de bene esse* to be accounted good till disallowed.

Bail is to be accounted good Bail, which is taken *de bene esse*, and before it be filed; until it be questioned and disallowed. (*Mich. 24 Car. B. R. Hill. 1649. 11 Feb.*) For before that it appears not but that the Plaintiff accepted of it.

Bail, why so called.

Bail is so called, because the Party bailed is delivered by the Law into the Custody of those that are his Bail, and who are to answer the Party, if they do not produce the Principal to do it. (*Trin. 1650. B. S. 15 Junii*) It is derived of the French Word *Bailler*, to deliver a thing to another.

In what Cases Special Bail is required.

Where transitory Actions must be laid in all Cases of Removal.

Special Bail is required in all Cases of Removal, except where the Defendant is an Executor or Administrator, be it by *Habeas Corpus*, Writ of Privilege or *Certiorari*; and if the Action be transitory, and removed out of the Courts of *Canterbury*, *Pool*, *Hull*, *Lichfield*, *Southampton*, &c. where the Judges of *Nisi prius* seldom come; by the course of the Court the Actions must be laid in the Counties where either of these Cities lie, so that the Plaintiff may try his Cause at the Assizes for the County, if he think fit.

In all Actions where Damages are uncertain, as in Covenant, or in Debt upon a Bond to perform Covenants, &c. Bail shall be at the Discretion of the Court.

In Actions where Damages are uncertain, Bail shall be at the Discretion of the Court.

If the Plaintiff do not declare against the Defendant in three Terms after Bail is put in, the Bail is not chargeable. *Trin. 1650. 2 Julii.* For then the Defendant is to go only upon Common Bail by the Rules of the Court. This is since altered to two Terms.

Bail not chargeable, if Plaintiff do not declare in three Terms.

If one that lies in Execution do bring his *Audita Querela*, he is bailable. 7 Feb. 1650. B. S. So held in *Tritton's Case*. But it must be Special Bail taken by the Court, and not at a Judge's Chamber. *Vide ante Audita Querela.*

Prisoner in Execution bailable if he brings his *Audita Querela*.

When one becomes Bail for another in an Action of Debt, he doth (in Law) assume or take upon him to render the Body of the Principal, if he be condemned, or else to pay the Debt and Damages he is condemned in. *Pasch. 1652. Per Roll, B. S.* And if he do either, it is sufficient to discharge himself.

Bail in Action of Debt takes upon him to render the Principal or pay the Debt and Damages.

Until a *Capias* be returned against the Principal, the Bail shall not forfeit his Recognizance for the Principal's not Appearance, by the ancient course of the Court; but that at this Day by the Indulgence of the Court he shall not forfeit his Recognizance, if the Principal come in at any time before the Return of the second *Scire Facias* against the Bail. *Trin. 1652. B. S.* This is in favour of the Bail, and the Plaintiff is not much prejudiced thereby.

When the Principal must come in to save his Bail harmless.

Upon a *Scire Facias* against the Bail they pleaded the Death of the Principal before the Return of the *Ca. sa*. This was adjudged an ill Plea; but if they had pleaded the Death before the Return of the second *Scire Facias*, that would have been a good Plea. *Baker against Thompson, Trin. 1650.*

Death of Principal pleaded before the Return of *Ca. sa* ill; but before the second *Sci. Fa.* good.

If one be sued in this Court for ten Pounds or above, the Plaintiff may by the course of the Court require Special Bail; but if he be sued for a less Sum, Common Bail is to be accepted: For the Law thinks not fit to trouble the Defendant to put in Special Bail for so small a Sum; but if a Bond be of 10 l. Penalty for the Payment of 5 l. here if the Bond be forfeited, the Defendant must put in Special Bail, because in strictness of Law the whole Penalty is forfeited.

For what Sum the Plaintiff may require Special Bail.

Special Bail is not to be given in an Action of Battery, except only in some special Cases; and that must be by Order of the Court, or of a Judge, where it appears to be a foul Battery, and much Damage done by it to the Defendant; else the Action of Battery is thought a slight Action, and not worthy of Special Bail; for the Bail is given in respect of answering the Plaintiff his Damages which may require Special Bail.

No Special Bail in an Action of Battery, except in some Cases, and by Order of Court.

Bail and Bail-Bonds.

If Defendant put in sufficient Bail, and Plaintiff will not accept it, the Court will allow of it notwithstanding.

finding the Bail to be sufficient, may take it and allow of it whether the Plaintiff will or no; for the Court is an indifferent Judge betwixt the Parties.

Rule of Court concerning the Neglect of Attorneys in filing of Common Bail, and signing of Judgments.

Whereas the Clerks and Attorneys of this Court, notwithstanding the Rules and Penalties for the due filing of Common Bails, do neglect to file their Common Bails, to the great Prejudice of the Plaintiffs, and Damage of the Chief Clerk of this Court; for the Remedy whereof it is ordered by the Court, That after the end of every Term, every Clerk and Attorney of this Court, who shall be Attorney for the Defendant, shall pay to the Plaintiff's Attorney upon joining of every Issue 1 s. 6 d. for Common Bail, unless the Defendant's said Attorney shall make it appear to the Plaintiff's Attorney, that Common and Special Bail is filed. And it is farther ordered, That every Clerk for the Plaintiff upon his Account for his Entries, shall pay to the Secondary of this Court the 1 s. 6 d. so by him received; and that every Clerk and Attorney who shall act contrary to this Rule, in any Part, shall respectively forfeit 10 s. for every Offence, to be paid to the Box of this Court: And it is farther ordered, That all Clerks and Attorneys for the Plaintiff upon signing of Judgment by Default or *non sum informat.* shall pay to the Secondary of this Court 1 s. 6 d. which 1 s. 6 d. so to be paid by the Plaintiff, shall be allowed him in his Costs. *Per Cur. Trin. 4 W. & M. Vide ante.*

When Bail is properly to be accounted Bail.

Bail is not to be accounted Bail (properly) until it be filed, and then and not before it is upon Record, by *Rolle* Chief Justice, *viz.* so as the Court may take notice of it.

Plaintiff may file Bail, if Defendant will not.

If the Defendant put in Bail before a Judge, and it is allowed, and yet he will not file it, the Plaintiff may if he will at his own Charge file it,

By *Rolle* Chief Justice, *Pasch.* 1655. to avoid Error, otherwise it might be mischievous to the Plaintiff.

When Bail is taken by a Judge, Plaintiff must allow of it, or shew Cause to the contrary.

If Bail be taken by the Judge *de bene esse*, the Plaintiff ought by the Rules of the Court, either to allow the Bail, or to shew Cause to the contrary, (By *Rolle*), That if it be good, he may be forced to accept it, or if it be not, that the Defendant may provide better Bail.

How the Sufficiency or Non-sufficiency of Bail is to be examined.

The Sufficiency or Non-sufficiency of Bail ought to be examined by the Judge at his Chamber, before the Court is to be troubled with the Matter; for the Court is not to be troubled in settling of

Matters of ordinary Proceedings; but if the Judge cannot make the Plaintiff and Defendant agree in the giving and taking of the Bail, then the Court is to be moved in it; whereupon they will order both

both Parties to attend, and the Bail also, and will examine the Cause of Action, and the Bails Sufficiency, and settle the Matters in Difference according to Reason, (By Rolle Chief Justice) which both Parties must abide by.

By the new Rules of this Court an Attorney ought not to require Special Bail to his Action, except the Cause of his Action doth by the Rules of the Law require it.

Attorney ought not to insist on Special Bail, except the Law requires it.

No Writ to hold to Special Bail must be sued out upon a Bail-Bond, for the Defendant's Appearance, or for any Penalty or Forfeiture upon any Penal Statute or By-Law.

In what Cases a Writ to hold to Special Bail must not be sued out.

The Bail to one brought in by Habeas Corpus, are liable to all Actions mentioned in the Return of the Habeas Corpus.

By Glyn Chief Justice, If one be brought into this Court by a Habeas Corpus, and doth put in Bail here, that Bail is liable to all Actions at the Suit of the Plaintiff mentioned in the Return of the Habeas Corpus, wherein he shall declare against the Defendant at any time within two Terms next after, but not afterwards; (Pasch. 1656. B. S.) For if there be no Declaration against him within two Terms, he may by the course of the Court go at large upon Common Bail.

If Judgment be affirmed upon a Writ of Error in the Exchequer-Chamber, no Execution shall go against the Bail in the Original Action for the Costs taxed *occasione dilationis executionis*. Per Magistrum. Livesay & alios, &c. Pasch. 21 Car. 2. R. Because that is not any part of the Recognizance wherein they were bound.

Though Judgment be affirmed upon Writ of Error, no Execution shall issue against the Bail in the original Action for the Costs taxed *occasione dilationis executionis*.

If the Defendant in a Habeas Corpus or Certiorari, upon a Cause removed out of an inferior Court, doth omit to put in Bail upon an eight Days Rule given by a Judge in Vacation-time, and four Days Rule given with the Clerk of the Rules in Term-time, and Notice thereof given to his Attorney, then the Plaintiff may have his Writ of *Procedendo* directed to the inferior Court to proceed in that Court *Brevi de Habeas Corpus ad contrarium inde directo in aliquo non obstante*; so also if he puts in insufficient Bail, and doth not (upon another Rule given by a Judge in Vacation-time to put in better Bail, or Notice given him in Term-time to put in better Bail, or justify in Court the Bail already put in) either put in better Bail, or justify in Court the Bail already put in, a *Procedendo* shall be awarded.

Where a *Procedendo* shall be granted upon the Defendant's Neglect to put in Bail, or if he puts in insufficient Bail.

How Bail are bound in a Recognizance upon a Writ of *Audita Querela*. Cro. Jac. 67. pl. 5.

How Bail are bound upon an *Audita Querela*.

Bail to the Action cannot be taken before any but a Judge of the Court, it being matter of Record; but Bail for Appearance may be taken by any Officer. Cro. Jac. 94, 95. pl. 21.

Before whom Bails must be taken.

When the Bail become chargeable with the Recognizance.

The Bail are not chargeable with the Costs upon a Writ of Error.

Where the Judgment against the Principal is reversed after Judgment against the Bail, they may have an *Audita Querela*.

Where Common Bail is put in, it shall be Common Bail to all other Declarations the same Term except Ejectments.

A Bail cannot be a Witness for a Defendant. When Special Bail is to be put in of Trinity and Hilary Terms.

And when of Easter and Michaelmas Terms.

How far Bail shall be liable.

Whether the Lands of Bail are bound from the time of becoming Bail, or the Time of the Recovery of the Judgment against the Principal, it was well argued, but no Judgment that I could find.

Cro. Jac. 449, 450, 451, 452. Bail upon a Writ of Error are only chargeable with the Damages and Costs in the first Judgment, not with the Costs upon the Writ of Error. *Cro. Jac. 696 pl. 4.*

After Judgment against the Bail upon *Scire Facias* the Judgment against the Principal is reversed, or Money paid by the Principal, the Bail shall have an *Audita Querela*. *Cro. Jac. 645 pl. 8. 646.*

If Common Bail be put in to an Action depending here, where the Defendant comes in by Process of the Court, (not in the Case of an Ejectment) that Bail so put in is liable to be Common Bail to all other Persons that shall put in Declarations against him that Term, *sedente Curia*, and not otherwise.

One that is Bail cannot be a Witness for the Defendant at the Trial; but in that Case the Court upon a Motion will discharge a Bail upon the adding of another good Man Bail in his Room, and order the Plaintiff to accept of the Bail tendered. This was done in the Case of the Lady Grey, *Pasch. 1656*. Else it would be mischievous to the Defendant; for a Bail cannot be a Witness, he being concerned in the Cause.

In any Action brought in this Court, where the Defendant, according to the Course of the Court, ought to put in special Bail; such Defendant, in the several Terms of *St. Hilary* and *Trinity*, shall have Liberty to put in good Bail at the Suit of any Plaintiff, before the Continuance-Day to be appointed by the Secondary after the End of those Terms: And within that Time, the Plaintiff shall not sue forth any Process against the Defendant or his Bail upon the Bail-Bond for his Appearance.

And also it is further ordered, That in the several Terms of *Easter* and *Michaelmas*, if the Defendant be arrested in *London* or *Middlesex*, upon any Process out of this Court, the Defendant shall have Liberty to put in good Bail at the Plaintiff's Suit, at any Time within eight Days after the Return of such Writ or Precept, and fourteen Days after the Return of any Writ sued out into any other County. *Per Curiam die Mercurii prox. post quinque septimanas Pasche. 11 W. R.*

No Defendant, who hath been arrested by Virtue of any Process issuing out of this Court, shall be compelled to put in Bail for a greater Sum than in such Process is contained; and if any Plaintiff shall declare against a Defendant, upon any Bail by him put in for a greater Sum than is expressed in

in the Process upon which the Defendant was arrested, then that Bail put in shall not be liable to that Action: And altho' the Plaintiff will enter a *nolle Prosequi*, or remit the Overplus Sum to make it agree with the Debt in the Writ, yet the Court will not allow it. 3 *Anna B. R.*

A Man was Bail before a Judge by the Judge's Directions for 40*l.* and upon the Trial the Jury gave 100*l.* Damages; in this Case the Bail are not liable: Because they were Bail but in 40*l.* and here the Recovery makes the Recognizance void. But *Quere* whether the Bail ought not to bring the 40*l.* into Court?

Where Bail before a Judge in 40*l.* and 100*l.* Damages are recovered,

But *Quere* whether

Where the Defendant cannot plead *comperuit ad Diem* to an Action; upon a Bail-Bond, he must pay Costs.

In all Cases where the Sheriff sues a Bail-Bond, if the Defendant cannot plead *comperuit ad Diem* to the Action, he must pay Costs upon staying of Proceedings upon the Bail-Bond: For in all Cases, where a Man will have a Favour, he must pay for it; for if he cannot plead *comperuit ad Diem*, so that in Strictness the Bond is forfeited, (let the Defendant's Case be what it will) it will be a Favour to the Defendant to stay Proceedings upon the Bail-Bond. *Vic. Middlesex & Newcomb. Hill. 7. W. B. R.*

Where the Cause hath been under Agreement, the Court will stay Proceedings upon a Bail-Bond.

But upon Oath made, That the Cause hath been under Agreement, the Court will set aside the Proceedings upon the Bail-Bond upon putting in of good Bail, and will compel the Plaintiff to proceed in the Original Action. 3 *Anna B. R.* This Matter is now by the Statute of 4 & 5 *Anna* left to the Judges: Which see *Postea* in this Title.

When the Principal may render himself in Discharge of his Bail.

Before a *Scire facias* is taken out against the Bail, or before the Return of the second *Sci' fa'*, the Principal may render his Body to the Marshal in Discharge of his Bail, and enter the *Reddidit se* in the Marshal's Book lying in the King's Bench Office: And then the Defendant's Attorney ought to get a Certificate from the Prison, that the Defendant is in Custody; and thereupon the Master of the Office will discharge the Bail-Piece, by writing *Reddidit se* upon it; otherwise the Bail are chargeable, notwithstanding the Prisoner is in Custody. *Vide postea.*

And how the Render to be, and how to discharge the Bail.

A Bail-Bond was entred into to a Sheriff, and says not of what County; and also to appear generally, without saying to what Action, and yet held good. 2 *Lev.* 123.

Bail-Bond to a Sheriff; and says not of what County, nor to whom to answer.

Where a Bond is entred into to the Sheriff, with an impossible Condition, the Bond is single: But if the Statute of 23 *H. 6. cap. 10.* be pleaded, it is void. 3 *Lev.* 74.

Impossible Condition, the Bond is single, but void by pleading the Statute, 23 *H. 6. cap. 10.*

By the Statute of 4 & 5 *Anna*, it is enacted, That if any Person shall be arrested by any Writ, Bill or Process, out of any of the Courts at *Westminster*, at the Suit of any Common Person, and the Sheriff or other Officer takes Bail from such Person, the Sheriff or other Officer, at the

How Bail-Bonds to be assigned by the Statute, 4 & 5 *Anna.*

Request

Request and Costs of the Plaintiff, or his lawful Attorney, shall assign to the Plaintiff in the Action such Bail-Bond, or other Security taken from such Bail, by endorsing of the same, and attesting it under his Hand and Seal, in the Presence of two or more credible Witnesses,

To be stamp'd before
Action brought.

Bail-Bond or Assignment,

The Assignee to bring
an Action in his own
Name.

The Court may give
such Relief to the Plain-
tiff or Defendant as they
shall think fit.

And also to the Bail.

Bail-Bond, or other Security for Bail.

Where Bail shall be
liable where an Action
is depending, and where
not.

Easter Term: Because the Action was then depending. Pasch. 8 W.
B. R. But if the Bail be put in of Easter Term, and the Bill be filed

When not liable, and
why.

Render upon the Day
of the Return of the
second *Scire facias*, or o-
ther Process against the
Bail.

upon the Recognizance, if he renders himself upon the Day of the

The Bail are discharged.

alios. Note, This Discharge must be upon a Motion and Rule of
Court; but this Matter cannot be pleaded, if there be a *Capias ad Sa-*

Upon a Motion of
Court, not by Pleading,
unless no *Capias ad Satis-*
faciendum be returned
and filed.

The Bail may plead
Death before the Return
of the *Capias ad Satisfa-*
ciendum.

he should render himself, the Recognizance was not broken.

The Party dies after
the *Capias ad Satisfacien-*
dum returned and filed,
and before *Sci. fa.*

which may done without any Stamp, provided the Assignment so endors'd be duly stamp'd before any Action be brought thereupon: And if the

Bail-Bond or Assignment, or other Security taken for Bail, be forfeit-
ed, the Plaintiff in such Action, after such Assign-
ment, may bring his Action thereupon in his own
Name. And the Court where the Action is brought,
may by Rule give such Relief to the Plaintiff and
Defendant in the Original Action; and to the Bail
upon the said Bond, or other Security taken from
such Bail, as is agreeable to Reason and Justice:
And that such Rule or Rules of the said Court, shall
have the Nature and Effect of a Defeazance to such

Where a Bill is filed (for the Purpose) of Easter
Term, and the Defendant puts in Bail of Trinity
Term following; the Bail, tho' put in of Trinity
Term, shall yet be liable to the Action brought in
Easter Term: Because the Action was then depending. Pasch. 8 W.
B. R. But if the Bail be put in of Easter Term, and the Bill be filed
of Trinity Term following, there the Bail shall not
be liable; because there was no Action depending
when the Bail was put in

If the Defendant renders himself to the Custody
of the Marshal in Discharge of his Bail, upon the
Day of the Return of the second *Scire facias* against
the Bail, *sedente Curia*: Or if an Action be brought
upon the Recognizance, if he renders himself upon the Day of the
Return of the Process against the Bail, *sedente Curia*,
the Bail are discharged. Per Magistrum Livesay &
alios. Note, This Discharge must be upon a Motion and Rule of
Court; but this Matter cannot be pleaded, if there be a *Capias ad Sa-*
tisfaciendum returned against the Principal; but if
there be no *Capias ad Satisfaciendum*, then it may
be pleaded, That there is no *Capias ad Satisfacien-*
dum returned and filed, and that is a good Plea.

If the Defendant dies before the Return of the
Capias ad Satisfaciendum against him, his Bail may
plead this in their Discharge to a *Sci. facias* against
them: Because dying before the Return of the *Ca-*
pias ad Satisfaciendum, which was the Writto which

Where a Man becomes Bail, and the Plaintiff
recovers, and a *Capias ad Satisfaciendum* is duly sued
out, and returned and filed against him, and after-
wards the Defendant in the *Capias ad Satisfaciendum*

dies before any *Scire facias* sued out against the Bail; yet this shall not excuse the Bail, because he died after the *Capias ad Satisfaciendum* returned and filed. But (*ex gratia Curie*) they do give the Bail time to bring in the Defendant after a *Capias ad Satisfaciendum*, and before the Day of the Return of the second *Scire facias*. 1. Roll. Abr. 250. N^o 6.

What may be done, *ex gratia Curie*.

But if the Defendant had died before a *Capias ad Satisfaciendum* returned and filed, there the Bail had been discharged. *Ibid.* N^o 7.

So also where the Principal died after a *Capias ad Satisfaciendum* returned, and before it was filed, the Court upon a Motion stayed the filing of it in Favour of the Bail. *Mich.* 35 Car. 2. B. R.

So where the Party died after *Capias ad Satisfaciendum* returned and not filed, the Court stop'd the filing of it.

Where a Judgment was recovered in an Inferior Court, and a Writ of Error brought, and the Bail renders the Principal pending the Writ of Error, it is a good Discharge of the Bail; but the Render must be upon Record, and so pleaded. *Trin.* 35 Car. 2. B. R.

How the Bail in an Inferior Court must render the Principal in a Writ of Error brought in B. R.

Bail is put in to an Action in an Inferior Court, a *Habeas Corpus* is brought to remove the Cause, and afterwards the same Term a *Procedendo* is granted, the Bail in the Inferior Court are not discharged, but stand still Bail. *Cro. Jac.* 363. pl. 25.

Bail put in to an Action in an Inferior Court, are not discharged where there is an *Hab. Corp.* and *Procedendo*.

Bail-Pieces are small Pieces of Parchment, on which are written the Names of the Plaintiff and Defendant, and Bail. And when filed in the Office of the Court, they are become a Record, and a Warrant for the Officer to enter up the Recognizance upon Record. And where the Writ requires special Bail, a Common Bail-Piece shall be a good *Comperuit ad Diem*, so long as the Bail-Piece remains upon the File; but the Court upon Motion will order it to be taken off from the File; because it is irregularly filed.

Of Bail-Pieces, and Common Bails.

When Bail are taken in the Country by a Commissioner, by Vertue of the Statute of 4 & 5 W. & M. cap. 4. a *Scire facias* may be sued out against them, either in *Middlesex*, or the County where the Bail was taken. *Lutw.* 287.

Where *Scire facias* may be sued upon Bail, taken by Commissioners in the Country. Stat. 4 & 5 W. & M. cap. 4.

A Judge of Assize may, by Vertue of the Statute of 4 & 5 W. & M. cap. 4. take Bail in his Circuit, which shall be transmitted up to a Judge of the Court, where the Action depends without Oath. But upon Commissioners taking of Bail, when it is transmitted up, there must be Affidavit made by some credible Person present at the taking of the Bail, of the due taking thereof. The Commissioner is to have but 2 s. but must take the Fees for filing and transmitting them up to the Judge, where the Bail-Piece is left.

How Bail taken by a Judge of Assize, and how by Commissioners, shall be transmitted up. 4 & 5 W. & M. cap. 4.

When upon Oath.

The Fees of it.

How to be justified.
4 & 5 W. & M. cap. 4. sect. 2.
4. Sect. 2.

The Plaintiff ought (if required by a Judge) to shew his Cause of Action, or Declaration, which requires Special Bail.

otherwise Common Bail is to be filed. But now by the late Statute, If the Plaintiff do not shew the Cause of Action in his Writ by way of *Ac etiam Bille*, &c. the Defendant may file a Common Bail; also, if the Defendant be in Custody upon a Writ with an *Ac etiam Bille*, and the Plaintiff doth not remove him to the King's Bench within two Terms; or now, by Vertue of a late Statute, declare against him in

Where a *Superfedeas* will be granted for a Prisoner in Custody.

the prosecuting, where the Plaintiff will not be at the Charge of bringing up the Prisoner into the King's Bench, that he may be declared against in Custody. See Title Prison and Prisoners.

No Executor or Administrator shall put in Bail in any Court, nor upon a Writ of Error:

Except in Cases of a *Devastavit*:

Or of his own Act.

they see Cause upon a Motion, will order a Writ for Special Bail. Note, For in the former Case he is in *Auter Droit*, and liable no farther than he has Assets, be the Cause of Action never so great: But in the later Cases he shall put in Bail, such as the Action would require if he were not Executor. *Hill. 22 Car. 1. B. R.* See also *Cro. Jac. 350. pl. 2.*

Bail may plead Payment of the Sum recovered, but not of a lesser Sum.

the Condition of the Recognizance is to pay the Condemnation Money, or render the Body; yet the Bail shall not plead Payment of a lesser Sum in Satisfaction after the Money became due. 2 *Lev. 212.*

Two became Bail, and Judgment against them, and a *Capias ad Satisfaciendum* sued out against one of them, and good.

be according to the Recognizance, joint or several. But where the Judgment is joint, so ought the Execution also; but the Recognizance

How Bails taken in the Country shall be justified. 4 & 5 W. & M. cap. 4. sect. 2.

If the Plaintiff requires Special Bail, he ought to shew his Cause of Action before the Judge that takes the Bail; or else to draw such a Declaration as he will stand to, and shew it to the Defendant's Attorney, that it may appear to the Court, that there is Cause why Special Bail should be given, otherwise Common Bail is to be filed. But now by the late Statute, If the Plaintiff do not shew the Cause of Action in his Writ by way of *Ac etiam Bille*, &c. the Defendant may file a Common Bail; also, if the Defendant be in Custody upon a Writ with an *Ac etiam Bille*, and the Plaintiff doth not remove him to the King's Bench within two Terms; or now, by Vertue of a late Statute, declare against him in *Custodia Vicecom.* Then upon Application made to a Judge, and Certificates of these Matters, a Judge will grant a Warrant for a *Superfedeas*. For it shall be intended that the Cause of Action is not worth

Where one is sued as an Executor or Administrator, he is not compellable to put in Special Bail, although it be upon a Cause removed by *Habeas Corpus* out of an Inferior Court; nor upon a Writ of Error brought by him; but in Case of a *Devastavit* for wasting of the Goods of the Testator, or where the Action is brought for something done by him since he became Executor, the Court, if they see Cause upon a Motion, will order a Writ for Special Bail. Note, For in the former Case he is in *Auter Droit*, and liable no farther than he has Assets, be the Cause of Action never so great: But in the later Cases he shall put in Bail, such as the Action would require if he were not Executor. *Hill. 22 Car. 1. B. R.* See also *Cro. Jac. 350. pl. 2.*

To a *Scire facias* against Bail, they plead Payment and Acceptance in Satisfaction of a lesser Sum than the Judgment; and naught. For although the Bail may plead Payment to the Plaintiff, in regard the Recognizance is to pay the Condemnation Money, or render the Body; yet the Bail shall not plead Payment of a lesser Sum in Satisfaction after the Money became due. 2 *Lev. 212.*

Two became Bail, and Judgment was had against them upon a *Scire facias*, and a *Capias ad Satisfaciendum* was sued out against one of them only; and held good: Because the Judgment is not a Judgment to recover, but to have Execution, and is to be according to the Recognizance, joint or several. But where the Judgment is joint, so ought the Execution also; but the Recognizance

Bail and Bail-Bonds.

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zance here being joint and several, although the *Sciri facias* be joint, yet the Execution may be several. 1 *Lev.* 226. *Nota*, tho' the Recognizance be to levy *de Terris & Catallis*, yet Execution of the Body is good; because it is the Law and Usage of the Court. *Ibid.*

An Action of Debt lies upon a Recognizance taken of Bail to an Action in *C. B. Cro. Jac.* 43. pl. 14.

Joint and several.
Sciri facias ad satisfaciendum
will well lye, tho' the
Recognizance is to be levied
de Terris & Catallis.

Debt lies upon a Recognizance entered into by Bail.

Where a Man renders his Body in Discharge of his Bail, the Plaintiff ought to charge him in Execution.

When the Court will Bail a Prisoner, who appears in Court upon a Return of a *Habeas Corpus*.

An Infant cannot be Bail.

What shall be an Acceptance in Law of the Bail.

How to except against Bail at a Judge's Chamber.

There shall be Special Bail to an Action brought by an Attorney for his Fees.

If the Defendant do render his Body into Custody in Discharge of his Bail, the Plaintiff ought by the Rules of the Court to make his Choice, whether he will proceed afterwards to charge the Body of the Prisoner in Execution, or to take his Goods, or have an *Elegit* against his Lands. For he ought not to proceed against both, and now it is in his Power to make his Election. And upon a Motion, the Court will order him to do either the one or the other by a certain Day.

The Court will not bail one, that appears in Court upon the Return of his *Habeas Corpus*, before the same be filed, and they have consider'd thereof to inform themselves, whether he isailable by the Law or not: For before that, it doth not appear judicially to the Court for what Cause the Party stood committed.

One under Age is not to be admitted to be Bail for another; because he cannot enter into a Recognizance.

The putting in of a Declaration, and the Acceptance of it by the Defendant's Attorney with the Privity of the Plaintiffs Attorney, is counted an Acceptance of the Bail. For by accepting of the Declaration, he admits the Defendant to be in Court, and takes upon him to plead.

After Bail put in before a Judge, the Plaintiff hath twenty Days Time to except against it; which Exception must be entred in the Bail-Book at the Judge's Chamber, at the Side of the Bail, there put in, in this manner, *viz.* I do except against this Bail: *J. A. Attorney pro Quer.* And you must put the Day when you enter your Exception. But if there be no such Exception entred in the Bail-Book, then the Defendant's Attorney may take the Bail-Piece away from the Judge's Chamber, and file it *volens* the Plaintiff's Attorney (and so may the Plaintiff's Attorney also.) And if the Defendant doth not file it in time, he incurs the Penalty of *5 s. Mich. 17. Car. B. R. per Cur.* See some Alteration made in this Rule, by another Rule made since.

If a privileged Person in this Court do bring an Action here for his Fees against another Person, (who is not privileged) he ought by the Course of the Court to have special Bail to his Action, whether there be Cause of special Bail or not.

The Sheriff may take a Bail-Bond, or an Attorney's Hand, for the Appearance of the Defendant upon an Outlawry.

7. & 8. W. 3 cap. 11.

Things as shall be required by the Court. Also he may by the same Statute reverse the

7 & 8. W. 3 cap. 11.

Audita Querela lies for the Bail, where the Judgment is revers'd by the Principal.

But the Bail cannot have any Advantage of an Error in the Judgment against the Principal.

The Bail may to a *Sciri facias* plead a Release to the Principal.

But cannot plead a Writ of Error depending.

No Bail upon a Writ of Error upon a Bond to perform Covenants.

Because the Words of the Statute are for Payment of Money only.

Where special Bail is not allowable.

a Special Rule of Court, or an Authority under a Judge's Hand for it.

Bail may be discharged, if the Plaintiff doth not declare in two Terms.

The Recognizance of the Bail.

When one becomes Bail for another in an Action of Debt, he doth bind himself in a Recognizance to render the Body of the Principal, if he be condemned; or else to pay the Debt and Damages he is condemned in; and if he doth either, it is sufficient to discharge himself.

If the Defendant doth put in sufficient Bail to the Plaintiff's Action, and he will not accept it, the Court upon Examination of the Matter, and upon the Oaths of the Bail, finding them to be Housekeepers, and sufficient Persons, may take it, and allow it, whether the Plaintiff will or no. For the Court is an indifferent Judge between the Parties.

Where Bail are taken, and where justified,

One that is outlawed and arrested upon the Outlawry, may, by Vertue of a late Statute made 7 & 8 W. 3 cap. 11. take an Attorney's Hand for his Appearance; or if it requires Bail, the Sheriff must take a Bail-Bond with two Sureties, to appear in Court at the Return of the Writ, and to do such

Things as shall be required by the Court. Also he may by the same Statute reverse the Outlawry by Attorney, and is not obliged to appear in Person, (as formerly) not to put in Bail, except where special Bail shall be ordered by the Court.

If the Judgment recovered against the Principal, be reversed by a Writ of Error brought by him, his Bail may have their Writ of *Audita Querela* to discharge themselves. For a Discharge of the Principal is in the Law a Discharge of the Bail. But the Bail cannot have any Advantage of an Error in the Judgment against the Principal; because he cannot bring a Writ of Error upon it.

Upon a *Sciri facias* against the Bail, they pleaded a Release made by the Plaintiff to the Principal, and adjudg'd a good Plea. But they cannot plead a Writ of Error depending upon the principal Judgment. *Brown and Price, M. 7. W.*

No Bail to be put in upon a Writ of Error upon Debt, upon a Judgment recovered upon a Bond, with Condition to perform Covenants. 1 *Lev. 260.*

This Court allows no Special Bail upon a penal Statute or By-Law, nor in any Action of Trespas, Assault, Conspiracy, Slander, &c. unless there be

a Special Rule of Court, or an Authority under a Judge's Hand for it.

If the Plaintiff does not declare against the Defendant in two Terms after Bail is put in, the Defendant may, if he please, nonsuit the Plaintiff, and then the Bail are discharged.

When one becomes Bail for another in an Action of Debt, he doth bind himself in a Recogni-

zance to render the Body of the Principal, if he be condemned; or else to pay the Debt and Damages he is condemned in; and if he doth either, it is sufficient to discharge himself.

If the Defendant doth put in sufficient Bail to the Plaintiff's Action, and he will not accept it, the Court upon Examination of the Matter, and upon the Oaths of the Bail, finding them to be Housekeepers, and sufficient Persons, may take it, and allow it, whether the Plaintiff will or no. For the Court is an indifferent Judge between the Parties.

Bail is never taken in Court, but at a Judge's Chamber, and if the Plaintiff accepts against them, then the Bail-Piece is brought into Court, where

the Bail also appears. And upon the Defendant's Motion, they are sworn to be House-keepers, and to what they are worth, and then are allowed or disallowed, as the Court sees Cause.

But if you sue out a *Sci facias* against the Bail upon their Recognizance taken before a Judge of this Court, though the Action is laid in London, or in any County of England, yet the *Sci facias* must be in *Middlesex*: Because the Recognizance is supposed to be taken at Westminster where the Court sits. 3 Anne B. R.

Sci facias against the Bail must be in *Middlesex*, because supposed to be taken in Court.

But upon a Recognizance upon a Writ of Error, it is otherwise: Because the Bail is taken at a Judge's Chamber. 3 Anne B. R.

Otherwise upon being Bail upon a Writ of Error.

An Original is sued out in London, and Bail put in, and the Declaration laid in another County. It is good against the Defendant, but his Bail are discharged, and not liable to a *Sci facias*. 3 Lev.

Where Bail are discharged, by declaring in a wrong County.

235, 245.

The Principal was rendered, but the Plaintiff finding the Bail-Piece not discharged, sued out a *Sci facias*, and upon two Nichils returned, had Judgment against the Bail, and afterwards the Bail-Piece was mark'd *Reddidit se*; and yet the Bail was then held to be chargeable. For that the Plaintiff had done what he could well justify. But afterwards, in another Case of this Nature, the Judgment was set aside upon Payment of Costs.

The Bail-Piece not discharged upon a *Reddidit se*.

Makes them chargeable.

Where a Bail-Bond is sued, if before the Rules for Pleading are out, the Defendant puts in good Bail, and moves the Court for a Rule to stay Proceedings, then upon the Payment of Costs the Court usually does it. Also where a Bail-Bond is sued, and the Defendant appears, and pleads to Issue, and Notice of the Trial is given, the Court hath, upon good Cause shewn, admitted the Defendant in the Original Action to put in good Bail to the Original Action, and pay Costs, and have stop'd any further Proceedings upon the Bail-Bond; but it is great Indiscretion in the Defendant to venture so far. But in case a Bail-Bond be entred into, and the Defendant doth not put in Bail, but the Bond is sued, and afterwards the Defendant in the Original Action dies; in this Case, if the Plaintiff had been delayed so long, as by the Course of the Court he might have tried his Cause against the Defendant in the Original Action, and recovered Judgment against him; if he had put in Bail at the Return of the Writ, and received a Declaration, the Court will never relieve the Bail upon the Bail-Bond, but they will be answerable to the Plaintiff's Demand. But this Matter is now made more easie by a discretionary Power given to the Judges, by the Statute of 4 & 5 Anne.

Upon suing of Bail-Bonds.

Where the Plaintiff is delayed.

4 & 5 Anne.

A Bail-Bond is dated before the Return of the Writ, but not sealed and delivered until the Day after the Return. The Plaintiff brings an Action upon this Bond. The Defendant craves Oyer of

A Bail-Bond dated before, but not sealed till after the Return of the Writ.

the

the Condition, and pleads, That the Bond was *Primo deliberatum* the Day after the Return of the Writ, *Absque hoc* that it was delivered the Day it bears Date: This was

A void Bond.

held to be a good Plea, and Judgment was given for the Defendant. *Hill. 5 W. & M. B. R.*

A Sheriff may take a Bail-Bond, and that shall excuse him.

The Statute appoints the Sheriff to let at large upon Bail, and therefore he is compellable to take Bail, and it is left to his Discretion what Bail he will take, and when he says that he hath taken Bail for him, *viz.* A. B. and C. D. having sufficient Estates in the County, that shall excuse him; nay if he takes one Surety it is sufficient. *Cro. El. 624. pl. 5.*

Tho' but with one Surety.

Bail upon an *Habeas Corpus* or *Certiorari* shall be liable for no more than is expressed in the Plaint, &c.

Where a *Habeas Corpus* or *Certiorari* is brought, and returned, and Bail put in thereupon; if the Plaintiff declares, and recovers more than the Sum in the Plaint returned upon such *Habeas Corpus* or *Certiorari*, the Bail are not liable, but are absolutely discharged. Because if the Law should be otherwise, the Bail might be ruined, they intending to be Bail only for the Sum mentioned in the Plaint returned, and no more; and this was adjudged upon great Consideration. *Mich. 35 Car. 2. Edwards against the Bail of Overton.*

Where a Plaint is levied in Case, and Bail put in, and afterwards Judgment confess'd in Debt, the Bail are discharged.

Where a Plaint is levied in Case, and Bail put in, and afterwards Judgment confess'd in Debt, the Bail are discharged. Judgment in Debt, which is accordingly done. By this the Bail are absolutely discharged: Because this is not the same Action to which the Bail became Bail. *6 W. & M.*

After a *Capias ad Satisfaciendum* returned and filed, and before *Sci. Fa.* the Principal dies, yet the Bail are liable.

If A. becomes Bail for B. at the Suit of C. and C. recovers against B. and afterwards a *Capias ad Satisfaciendum* is sued out against B. and returned *non est inventus*, and filed; and afterwards B. dies before any *Sci. Fa.* is sued out against A. Yet this will not excuse A. the Bail, because the Recognizance is broken, in that B. did not render his Body upon the *Capias ad Satisfaciendum*; and yet he might in his Discharge have brought in B. (if he had been living) before the second *Sci. Fa.* returned; but this is *ex gratia Curia*. See *Cro. Jac. 165. Hut. 47.* But it had been otherwise, if he had been dead before the *Ca. Sa.* returned and filed. See *1 Jones R. 29. and Cro. El. 597.*

Ex gratia Curia.

Aliter, if he had been dead before a *Ca. sa.* returned and filed.

Recognizance forfeited for the not assigning Errors.

A Man brings a Writ of Error, and puts in Bail to prosecute it with Effect; if he doth not assign his Errors, and sue out a *Sci. Fa. ad audiendum Errores*, this is a Forfeiture of the Recognizance. *1 Rol. Rep. 329.*

What Persons, and for what Causes,ailable.

What Persons may be bailed, and for what Criminal Causes. See *Danv. Abr. 677, 678, 679, 680, 681, 682, &c.*

Bail and Bail-Bonds.

189

Bail is taken only when the Matter *Stat indifferenter*, and not when the Offence is open and manifest. 2 *Inst.* 189.

If an *Audita Querela* be founded upon a Deed or Record, the Plaintiff may be bailed; but if upon Surmise of a Matter of Fact only, he cannot. 1 *Rol. Rep.* 132.

Where the Defendant, taken upon a *Capias* in *Withernam*, shall be bailed after an *Elongatus* returned. See Title *Homine Replegiando*.

Bail for Appearance only may be taken by a Serjeant at Mace, but Bail to the Action must be before the Judge of the Court. *Cro. Jac.* 94, 95.

Bail taken upon an *Audita Querela* where the Plaintiff is in Execution, must be taken in open Court. 1 *Bulstr.* 140. and the Recognizance must be to render his Body to be imprisoned as he was before. *Dyer* 193. *Margine.*

In the pleading of a Render of the Principal, the Bail must say, *Quod venit hic in Curia, & in eadem Curia reddidit se custod Mar Maresc. in exoneratione Manucaptorum suor, & per eandem Cur Commisus fuit, &c.* 3 *Bulstr.* 192.

In pleading of a Render, the Defendant must conclude his Plea, *prout patet per Recordum*; for this is not to be tried *per Pais*, but *per Recordum*. *Hob.* 210. *Latch* 149. *Mo.* 888. pl. 1249.

In what Cases two Justices of the Peace, one being of the *Quorum*, may bail Criminals, and also what Coroners can do therein.

One Justice of the Peace may bail a Person brought before him for Manslaughter or Felony, or Suspicion thereof, having first taken the Examination of such Prisoner, and Information of those who bring him, and shall certify the same, as if he had committed him, and shall bind over the Witnesses to give Evidence.

When Bail is to be taken, and when not.

Where the Plaintiff in an *Audita Querela* may be bailed, and where not.

Where upon a *Capias* in *Withernam*.

Who may take Bail for Appearance, and who must take it to the Action.

Must be taken in Court upon an *Audita Querela*.

How the Recognizance to be.

The pleading of a Render of the Principal.

Must conclude *Prout patet per Recordum*.

Where two Justices (one the *Quorum*) and also Coroners may bail Criminals.

1 & 2 *P. & M.* c. 13.

Where one Justice may bail.

2 & 3 *P. & M.* c. 10.

And bind over the Evidences.

No warrant of Arrest to be taken of a Party under an Arrest, unless an Attorney be present at the taking of it.

Note. This is a standing Rule. That it was held that a Warrant to commit a Judgment taken from a Man under an Arrest, in the Presence of an Attorney's Clerk or Solicitor, was void. *Park. & M.*

Bail.

3 C

Bailiff.

Abowry.
Corporation.
See Rescue.
Sheriff.

The several Sorts of Bailiffs.

Of Bailiffs there are three Sorts, viz. Bailiffs of Liberties, Sheriff's Bailiffs, and Bailiffs of Lords of Manors: Bailiffs of Liberties are those Bailiffs who are to execute the Sheriff's Process within their Liberty: Sheriff's Bailiffs are those who are quasi Servants to the Sheriffs, to execute their Warrants: Bailiffs of Lords are to collect their Rents, and levy their fines and Amercements.

Where a Bailiff may execute a Writ.

Sheriff's Bailiff; and not only a Bailiff of some Liberty within the County.

Sheriff himself, not his Bailiff, an Officer of the Court. But Bailiff of a Liberty the Court will take notice of.

But Sheriff's Bailiff shall be punish'd for Misbehaviour in executing the Process of the Court.

No Warrant of Attorney for a Judgment to be taken of a Party under an Arrest, unless an Attorney be present at the sealing of it.

Note, This is a standing Rule.

Note, That it was held that a Warrant to confess a Judgment taken from a Man under an Arrest, in the Presence of an Attorney's Clerk or Solicitor, was void. *Pasch. 5 W. & M.*

Where a Return of a Rescue out of the Custody of a Sheriff's Bailiff, is good.

A Bailiff may execute a Writ out of the Hundred where he is Bailiff. (*Pasch. 23 Car. 1. B. R.*)

For he is Bailiff all the County over, if he be the Sheriff's Bailiff; and not only a Bailiff of some Liberty within the County.

A Sheriff's Bailiff is not an Officer of the Court; but the Sheriff himself is the Officer that the Court takes notice of: But the Bailiff of a Liberty is such an Officer as the Court will take notice of. *Pasch. 23 Car. 1. B. R.*

But if a Sheriff's Bailiff misbehave himself in the Execution of the Process of this Court, this Court will punish him for so doing.

No Bailiff or Sheriff's Officer shall presume to exact or take from any Person, being in his Custody by Arrest, any Warrant to acknowledge a Judgment, but in the Presence of some Attorney, who then shall subscribe his Name thereto, upon pain of being severely punished. *Pasch. 15 Car. 2. Reg.*

A Rescue returned *extra Custodiam* of a Sheriff's Bailiff, is good, without saying, out of the Sheriff's Custody. *1 Lev. 214. 2 Lev. 26.*

A Rescue

A Rescue was returned by the Bailiff of a Liberty, and it was *è custodia sua* instead of *mea*, and held not to be good. 2 Keb. 177. pl. 68.

The Sheriff returned a Rescue *è custodia Ballivi mei*, and held good; for there is *veritas legis & facti*; and if either be alledged, it's good, and as well as *è custodia mea*; but he must say, *cepit & arrestavit, & in custodia sua habuit*. 2 Keb. 217. pl. 58.

If a Man become a Bankrupt, and afterwards his Goods are taken in Execution upon a Judgment, and then a Statute is taken out, and he is declared a Bankrupt, and the Goods are assigned. Though the Assignee may have Trover for the Goods against the Plaintiff in the Judgment, yet he cannot have any Action against the Bailiff. *Show. Rep. 12.*

What a Bailiff may do, who takes Goods in Execution and keeps them, whether he shall be allowed any more for it than the Execution-Money. *Lutw. 1446.*

A Bond taken by the Bailiff of *Westminster*, to indemnifie him upon Execution against Goods, and good. *Lutw. 596.*

The false Return of a Sheriff shall not make a Bailiff Errant punishable for what he did lawfully. *Cro. El. 181. pl. 16. See Cro. Car. 447.*

A Bail-Bond taken to a Bailiff of a Corporation, and not to the King, to appear at the Corporation-Sessions, and good. *Lutw. 501.*

When a Bailiff distreins, he ought, if required, to shew the Cause of his Distress, but not unless he be required. 1 Leon. 50. Case 64.

He cannot distress for an Amercement in a Leet without a special Warrant from the Steward or Lord. *Cro. Eliz. 698. pl. 11. 748. pl. 1.*

The Defendant pleads, That *presentat' fuit*, that the Plaintiff surcharged the Common, and thereupon he was amerced, but did not aver that he had surcharged. *Cur.* It is well enough for the Bailiff, who ought to take notice only of the Presentment. *Cro. El. 478. pl. 1.*

A Bailiff cannot give a Licence to commit a Trespass, as to cut down Trees, &c. nor can accept Amends for a Trespass, but may make a Lease at Will, reserving a Rent. *Cro. Jac. 377. pl. 4.*

A Bailiff may do any thing for Benefit of his Master, and it shall stand good till his Master disagrees to it; but he can do nothing to his Prejudice. *Litt. Rep. 70.*

A Bailiff pleads Property in a Stranger in Replevin, and good. 1 Lev. 90.

A Rescue retournable by a Bailiff of a Liberty.

A Rescue retournable by the Sheriff, *è custodia Ballivi sui*.

The Bailiff shall be excused upon serving of an Execution, where the Plaintiff shall not.

What a Bailiff, who takes Goods in Execution, may do.

A Bond taken by the Bailiff of *Westminster* to indemnifie him upon an Execution of Goods.

A false Return shall not prejudice a Bailiff.

Bail Bond to a Bailiff of a Corporation, to appear at the Corporation-Sessions, and good.

Where a Bailiff ought to shew the Cause of his Distress.

Must have a Warrant from the Steward or Lord to distress for an Amercement.

Bailiff pleads, That *presentat' fuit*, that he surcharged the Common, and was therefore amerced, it is well enough.

What a Bailiff may not do, and what he may do.

What he may do, and what he cannot do.

Litt. Rep. 70.

Bailiff pleads Property in a Stranger.

The

How a Bailiff may make Conuzance to a Corporation, *Sans Writing*, for Damage Feasant.

Not in an Affize.

What Act shall make a Man a Bailiff.

he shall be adjudged as Bailiff, altho' he was not his Bailiff. 7 H. 4. 34. b. 2 Leon. Case 246.

Cannot distrein for an Amercement, without a Warrant from the Steward.

A Bailiff may license one to go over the Land, and why.

May distrein Damage Feasant: He hath the Care of the whole Manor.

Amends for Trespas cannot be tendered to a Bailiff upon a Distress.

A Bailiff cannot enter for a Condition broken.

What a Bailiff may do, or not do, upon an Arrest.

A Bailiff may make a Conuzance under a Corporation, without Writing, in an Avowry for Damage Feasant. 3 Lev.

But in an Affize the Bailiff must have a Warrant under the Common Seal of the Corporation. 1 Plow. 91.

Where a Man takes Cattle without any Command for Services due to the Lord, or for other Matters; if the Lord afterwards agrees the taking,

A Bailiff of a Manor cannot distrein for an Amercement without a Special Warrant from the Steward. Cro. El. 698, 748.

A Bailiff may license one to go over the Land, for this is a Trespas to the Possession only; and the Bailiff hath the Disposal of the Profits of the Possession. Cro. Jac. 337. pl. 4.

A Bailiff may himself, or may command another to take Cattle Damage Feasant upon the Land, for he hath the Care of all Things within the Manor. Danv. 685. N^o 4.

If a Distress be taken Damage Feasant, Amends cannot be tender'd to a Bailiff; for he cannot deliver the Distress when once taken, nor demand Rent upon a Condition of Re-entry. 5 Rep. 76.

A Bailiff cannot enter for a Condition broken: For a Condition is a special Matter; and it is at the Will of the Lord, whether he will enter or no: But a Bailiff cannot enter without his Commandment. Dal. 55. Mod. Case 152.

What a Bailiff may do, and what he may not do, upon an Arrest. See Title Arrest and Title Sheriff.

See more concerning a Lord's Bailiff, or Bailiff of a Manor in Gen. Abr. 665, 680.

Bailiff and Receiver, See Wills.

Bailment.

See { Action.
Trover.

Bailment is a Delivery of a Thing to another; sometimes to be delivered back to the Bailor, sometimes to the Use of the Bailee, and sometimes to a third Person; and this Delivery is called a Bailment.

Bailment, what.

If a Bailiff of a Manor, or Factor, or such like Accountant, be robb'd without his Default or Negligence, he shall be discharged thereof upon his Account: So also in Case of a Guardian. *Co. Litt.* 89. a.

A Bailiff, Factor or Guardian is robb'd, they shall be discharged in their Account.

But if a Carrier be robb'd, he hath his Hire; and therefore implicitly undertakes the safe Delivery of the Goods. *Ibid.*

Otherwise of a Carrier, and why.

So if Goods be delivered to a Man to be safely kept, and they are stoln: This shall not excuse him, because by the Acceptance he undertook to keep them safely, and must do it at his Peril. *Ibid.*

Where Goods are delivered to a Man to keep, how he must keep them.

If Goods are delivered to one to be kept, or safely kept, is all one in Law: But if they are delivered to be kept as he will keep his own; there if they are stoln, without his Default or Negligence, he shall be excused. *Ibid.*

To be kept, or safely kept, is all one.

Where a Man takes them to keep as he doth his own.

If pawned Goods are stolen, he shall be discharged, because he had a Property in them, and therefore ought to keep them no otherwise than his own. *Ibid.* But if the Pawnor tendred the Money before the Stealing, and the other refused to deliver them, there he shall be charged. *Ibid.*

Where the Party to whom Goods are pawned shall be charged.

If I leave a Chest with C. to be kept, and take away the Key, and do not tell C. what is in it, and the Chest with what was in it is stolen, C. shall not be charged with it. *Co. Litt.* 89. a. b. because C. was not trusted with them. And what is said as to stealing, is to be understood also in case of Shipwreck, Thunder, Lightning, or other inevitable Accidents.

Where they are stoln, and where not.

So if a Chest lock'd up is left, and the Key taken away.

So also in case of inevitable Accidents.

In what manner Goods ought to be received.

Lies not for an Horse stolen at Grass, unless upon a special Undertaking.

Bailment.

Note, It is necessary for him who receives Goods to keep, to receive them in a special Manner, viz. to be kept as his own, or at the Peril of the Owner. *Co. Litt. 89. b.*

If *A.* agists the Horse of *B.* for 2 s. a Week, and he is stolen, *B.* shall not have an Action against *A.* for it, unless *A.* make a special Promise to keep or re-deliver him safe. *Mo. 543. pl. 720.*

Bankrupt.

See Commission. Property.

A Bankrupt, what.

1 Jac. 1. cap. 15.

A Bankrupt is thus described by 1 Jac. 1. cap. 15. viz. All and every Person who shall use the Trade of Merchandize, by way of Bargaining, Exchange, Barter, or otherwise in Gross, or by seeking of his or her Living by Buying and Selling, and being a Subject born of this Realm, or any of the King's Dominions, or a Denizen, who shall depart his house, or absent himself, or suffer himself to be arrested for any Debt or other Thing not grown due; for Money delivered, Wares sold, or other good Considerations; or shall suffer himself to be outlawed, or go to Prison; or fraudulently procure himself to be arrested, or his Money or Goods to be attached; or depart from his Dwelling-house; or make any fraudulent Conveyances of his Lands, Goods or Chattels, whereby his Creditors, being Subjects born, may be defeated in the Recovery of their just and true Debts; or being arrested for Debt, shall lie in Prison six Months or more, upon such Arrest or Detention, shall be accounted and adjudged a Bankrupt.

A Bankrupt to one Creditor, is so to all; and why.

A Man once adjudged a Bankrupt is always accounted so in Law.

He that is a Bankrupt to one Creditor, is accounted in Law to be a Bankrupt to all. (22 Car. 1. B. R.) For he is a Bankrupt in respect of himself and his Estate, and not in relation to any particular Person only.

He that is once adjudged to be a Bankrupt, is always accounted to be a Bankrupt as to the rest of his Creditors, when he was adjudged to be so. 22 Car. 1. B. R.

If a Man, with Intent to support the Credit of a Bankrupt, suffers him to have his Goods in Custody, and to dispose of them, the Property of these Goods shall be accounted to be in the Bankrupt, and the true Owner of the Goods shall lose the Property of them, (18 April. 1651. B. S.) as a Punishment for his false Dealing herein, and of the Mischiefs which may grow by such Devices to evade the Laws: For the Law cannot take notice of such private Things done between the Parties, but will judge of Things as they appear to be; a Trust being a Badge of Fraud.

If a Man suffers a Bankrupt to have and dispose of his Goods, he shall lose the Property of them.

The Act 4 & 5 Anne. Sess. 1.

A Bankrupt must upon thirty Days Notice in Writing, and Notice in the Gazette, surrender himself to the Commissioners, and submit to be examined.

To deliver to the Commissioners all his Books, Goods, Wares, &c.

The Punishment is Felony without Clergy.

Proviso for enlarging of the Time.

And by whom, and for how long Time.

The Commissioners may call before them all Persons concerned with the Bankrupt.

By an Act made at the first Session of 4 & 5 Anne, entitled, *An Act to prevent Frauds frequently committed by Bankrupts*, it is enacted, That if any Person shall become a Bankrupt within any of the Statutes made against Bankrupts, against whom a Commission shall be awarded, shall not within thirty Days Notice in Writing left at the Place of his usual Abode, and Notice in the Gazette, that such Commission is sued out, and of the Time and Place of a Meeting of the Commissioners, surrender himself to the Commissioners, or some of them, and submit to be examined upon Oath before the Commissioners, or the major part of them, and in all Things conform to the Statutes already made concerning Bankrupts, and upon his Examination fully and truly disclose and discover, how, and in what manner, and to whom, and upon what Consideration, he hath disposed, assigned or transferred any of his Goods, Wares, Merchandizes, Money, or other Effects, or Estate, and all Books, Papers and Writings relating thereto, of which he was possess'd, or in or to which he was any way interested or entitled, or which any Person had or hath in trust for him or his Use, at any time before or after the suing of the said Commission; and also deliver to the Commissioners or the major Part of them, all such Part of his Goods, Wares, Merchandizes, Effects and Estates, and all Books, Papers and Writings relating thereunto, as at the Time of such Examination shall be in his Possession, Custody or Power (his and his Wife's and Childrens necessary wearing Apparel excepted) then the said Bankrupt, in case of any Default or wilful Omission therein, being convicted by Indictment or Information, shall suffer as a Felon without Benefit of Clergy.

Provided the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, may enlarge the Time for such Persons Surrender, and discovering his Estate and Effects, as the Lord Chancellor, Lord Keeper or Commissioners shall think fit, not exceeding sixty Days, so as such Order be made five Days before the Time such Person was to surrender himself, and make such Discovery.

That the Commissioners have Power and Authority to send for and call before them by such Process, Ways and Means as they shall think fit,

all

all such Persons as they shall be informed and believe can give any Account or Information of any Act of Bankruptcy committed by such

And examine them upon Oath, or as by Law they may.

Law authorized to examine touching such Bankrupt's Estate, and any Act or Acts of Bankruptcy committed by such Person against whom such Commission shall issue forth; and if any Person upon Payment or Tender and Refusal to accept of such reasonable Charges, shall refuse or neglect to appear, not having a reasonable Excuse to be made known to the Commissioners, and by them allowed, or when come before them shall refuse to be sworn, or if a Quaker to take the solemn Affirmation appointed for such People, or being sworn, or having taken such Affirmation, shall refuse to answer all such Questions as by the Commissioners shall be put to them relating to any Act of Bankruptcy committed by the Person against whom such Commission is awarded. Then the said Commissioners, or the major Part of them, may commit to such Prison as they shall think fit, all such Person or Persons; and also to direct their Warrant to such Person or Persons as they, or the major Part of them, shall think fit, to apprehend and arrest such Person who shall refuse to appear, and to commit him to such Prison as the Commissioners, or the major Part of them, shall think fit, there to remain without Bail, until such Person shall submit to the Commissioners, and be by them examined according to the true Intent of this Act: Provided no Person be obliged to travel above twenty Miles to be examined.

And if upon Payment or Tender of their reasonable Charges they do not appear,

Or refuse to be sworn,

How in Case of a Quaker,

Then they may be committed to Prison, *quousque*, &c.

Warrant to such Person or Persons as they, or the major Part of them, shall think fit, to apprehend and arrest such Person who shall refuse to appear, and to commit him to such Prison as the Commissioners, or the major Part of them, shall think fit, there to remain without Bail, until such Person shall submit to the Commissioners, and be by them examined according to the true Intent of this Act: Provided no Person be obliged to travel above twenty Miles to be examined.

No Person to travel above twenty Miles to be examined.

That upon the Commissioners Certificate of a Bankrupt, the Judges and Justices of the Peace are to make out Warrants for apprehending of him.

Courts of King's Bench, Common Pleas or Exchequer, and all and every the Justices of the Peace in *England, Wales*, or Town of *Berwick upon Tweed*, shall, upon Application made to them, grant his or their Warrant under Hand and Seal, for the apprehending of such Person, and committing of him to the Common Gaol of the County where he shall be so apprehended, there to remain until removed by Order of the Commissioners, or the major Part of them, by Warrants under their Hands and Seals; and the Gaoler is to give Notice thereof to one of the Commissioners, to the Intent that they send their Warrant to such Gaoler for the Delivery of such Bankrupt to the Person or Persons named in such Warrant, to convey the Person to the said Commissioners, in order

And committing of him to the County-Gaol, until removed by Order of the Commissioners.

The Gaoler to give Notice to one of the Commissioners, who is to deliver the Person upon the Commissioners Warrant.

such Warrant, to convey the Person to the said Commissioners, in order

der to such Examination and Discovery, as afore-
said: And also to take and seize any the Wares,
Goods, Merchandizes or Effects of such Person, or
any of his Books, Papers or Writings, or any other
his real or personal Estate: Provided, that if such
Person so apprehended within the said thirty Days,
shall submit to be examined, and conform as if he
had surrender'd himself, as he is by this Act re-
quired, then he shall have the Benefit of this Act
as if he had surrender'd himself voluntarily.

That if any Person shall incur the Penalty of
Felony within this Act, such Felon's Goods and
Estates shall be divided amongst the Creditors.

That if any Bankrupt shall within the Time li-
mited by this Act, surrender himself to the major
Part of the Commissioners, and conform as this
Act directs, he shall be allowed 5 *l. per Cent.* out of the
neat Product of the Estate recovered in, and re-
ceived on such Discovery, to be paid by the As-
signee of the Commissioners; so as the 5 *l. per Cent.*
doth not amount to above 200 *l.* and shall be dis-
charged from all Debts by him owing at the Time he became a Bank-
rupt; and if he shall be afterwards arrested for any Debt due before
he became a Bankrupt, he shall be discharged upon
Common Bail; and may plead that the Action did
accrue before he became a Bankrupt, and may give
this Act and the special Matter in Evidence; and
if the Defendant hath a Verdict, or the Plaintiff be
non-suited, the Defendant shall recover his Costs.

Provided, That if the neat Proceed of such Bank-
rupt's Estate shall not amount to pay eight Shil-
lings in the Pound, after all Charges deducted,
then he shall not be allowed 5 *l. per Cent.* of such
Estate as shall be so recovered in, but shall be paid
by the Assignees so much as they and the major Part of the Commis-
sioners shall think fit to allow him.

That every Person who shall have accepted of
any Trust, and conceals or protects any real or
personal Estate of any Bankrupt from his Credi-
tors, and shall not within thirty Days next after
such Commission shall issue out, and Notice given to such Person to
discover such Trust and Estate in Writing to one of the Commissio-
ners, and submit himself to be examined by them,
of them, and truly discover the same, shall forfeit
100 *l.* and double the Value of the Estate, either
real or personal, concealed, for the Benefit of the
Creditors, to be recovered by an Action of Debt
in the Assignees Names, wherein Costs shall be al-
lowed to either Party.

All his Goods and
Estate to be seized.

That if he shall submit
to be examined within
thirty Days, he is to
have the Benefit of this
Act.

That the Felon's Goods
shall go amongst the Cre-
ditors.

He that surrenders and
conforms, shall be al-
lowed 5 *l. per Cent.* So
as it amounts not to above
200 *l.* and shall be dis-
charged from all Debts
owing when he became
a Bankrupt; and if af-
terwards arrested, may
file Common Bail.

What he may plead
and give in Evidence.

Where he shall have
his Costs.

That if the Bankrupt's
Estate, after Charges de-
ducted, shall not amount
to eight Shillings in the
Pound, what to be done
then.

The Penalty of a
Trustee, Concealer or
Protector of a Bankrupt's
Estate.

to such Person to
of the Commissio-
or the major Part

One hundred Pounds,
and double the Value.

How and by whom to
be recovered.

The Premium for him who in sixty Days shall discover any Part of the Bankrupt's Estate.

Part of the Commissioners, then he shall be allowed by the Assignees 3 l. per Cent. out of the Neat Proceed of what he shall discover.

Where mutual Credit hath been given, the Commissioners or Assignees may settle the Account.

ballanced, then the Commissioners or Assignees may adjust the same, and take the Ballance in full Discharge thereof, and the Debtor to

And shall have only what is due upon the Ballance.

No Benefit by this Act to any Person who hath paid above 100 l. upon a Child's Marriage.

on his Oath before the major Part of the Commissioners, that he had at the Time thereof, over and above the Value so given or paid, re-

Unless he had sufficient to pay all his Debts.

What Sittings there must be of the Commissioners.

To plead the general Issue, and give the special Matter in Evidence.

Gives no Privilege to such who have lost 5 l. at a time, or 100 l. in twelve Months at any Game, which see here particularized.

Shuffle-Board, or in or by Cock-fightings, Horse-Races, Dog-Matches, Foot-Races, or other Pastimes or Games; or by bearing a Share

Or in Betting, &c.

Where a Bankrupt voluntarily surrendring of himself shall have the Benefit of this Act.

concerning Bankrupts, and to this Act, shall have the Benefit of this Act.

That if any Person shall within sixty Days after the time allowed the Bankrupt to surrender himself, voluntarily come in and discover any Part of such Bankrupt's Estate before the Major Part of the Commissioners, then he shall be allowed by the Assignees

Where it shall appear to the major Part of the Commissioners, that mutual Credit hath been given betwixt such Bankrupt and any Person who shall be Debtor to such Person, and Proof made thereof, and that the Accounts are open and un-

Provided that this Act shall not extend to grant any Benefit to any Bankrupt against whom a Commission shall issue out, who hath upon the Marriage of any Child paid above 100 l. unless it shall appear by his Books fairly kept, or otherwise, and on his Oath before the major Part of the Commissioners, that he had at the Time thereof, over and above the Value so given or paid, remaining in Goods, Wares, Debts, ready Money, or other real or personal Estate, sufficient to pay and satisfy to every of his Creditors their full and entire Debts.

The major Part of the Commissioners may appoint not less than three Meetings within the thirty Days, the last whereof to be the thirtieth Day limited for such Bankrupt's Appearance.

That if any Person be sued for any thing done by Vertue of this Act, he may plead the general Issue, and give this Act and special Matter in Evidence.

This Act shall not give any Privilege or Benefit to any Bankrupt who shall have lost in one Day to the Value of 5 l. or of 100 l. within twelve Months next preceding his becoming a Bankrupt, in playing at Cards, Dice, Tables, Tennis, Bowls, in playing at Cards, Dice, Tables, Tennis, Bowls, in or by Cock-fightings, Horse-Races, Dog-Matches, Foot-Races, or other Pastimes or Games; or by bearing a Share in the Stakes, Wagers or Adventures, or betting on the Sides of such as do or shall play, act, ride or run as aforesaid.

That all Persons who shall voluntarily surrender himself to the major Part of the Commissioners, and submit to be examined from time to time upon Oath, conform to the several Statutes made concerning Bankrupts, and to this Act, shall have the Benefit of this Act.

That if such Person voluntarily surrendring himself, shall neglect or omit to discover and deliver his Estate and Effects, and do every Thing as in this Act is directed, he shall be adjudged to be a fraudulent Bankrupt within this Act; and being lawfully convicted as aforesaid, shall suffer as a Felon without Benefit of his Clergy.

That if he shall not discover and deliver his Estate, he shall be adjudged upon Conviction a Felon without Benefit of Clergy.

That no Discovery upon Oath to be made by a Bankrupt of his Effects and Estate, shall entitle him to the Benefit allowed by this Act, unless the major Part of the Commissioners shall in Writing under their Hands and Seals certify the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, That such Bankrupt hath made Discovery of his Estate and Effects, and in all Things conformed according to the Directions of this Act; and that there doth not appear to them any Reason to doubt the Truth of such Discovery; or that the same is not a full Discovery of all his Estate and Effects; and unless such Certificate shall be allowed and confirmed by the Lord Chancellor, Keeper, or Commissioners of the Great Seal for the Time being, or two of the Judges of the Queen's-Bench Common Pleas and Exchequer, to whom the Consideration of such Certificate shall be referred by the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal, for the Time being; and that the Creditors of such Bankrupt are to be allowed to be heard, if they shall think fit, before the respective Persons aforesaid, against the making of such Certificate, and the Confirmation thereof.

What shall entitle a Bankrupt to the Benefit of this Act.

It must be by a Certificate of the Commissioners to the Lord Chancellor, &c.

Which must be allowed and confirmed, and by whom.

The Creditors may be heard against it.

That there shall not be paid or allowed by the Creditors, or out of the Bankrupt's Estate, any Monies whatsoever for Expences for the Commissioners eating and drinking, or of any other Persons at the Meetings of the Commissioners, or any of the Creditors, or others, in Order to execute or prepare Matters to the Execution of such Commissions; and if any Commissioner shall order such Expence to be made, or eat or drink at any such Meeting at the Charge of the Creditors, or out of the Bankrupt's Estate, he shall be disabled for ever after to act as a Commissioner, or in any other Commission of Bankrupts.

No Expences to be allowed to the Commissioners, or any other Person, for eating and drinking.

If a Commissioner shall act contrary, to be for ever disabled from being a Commissioner.

The Continuance of this Act.

Note, This Act was made to continue for three Years, and from thence to the End of the next Session of Parliament; but it was afterwards recited in an Act made in the Second Session of this Parliament, which is the Act here next following, which was continued by an Act made 7 *Anna* for five Years, from the 25th of *April* 1709.

5 Anne. Sess. 2.

5 Anne. Sess. 1.

The removing, carrying away, concealing or embezzling any of the Monies, Goods, Effects, Bill, Bonds, &c. of the Bankrupt to defraud the Creditors,

she, or they, or any in Trust for him, her, or them, is, or are possessed of, or entitled unto, to the Value of 20*l*. or upwards; or any Books of Accounts, Bonds, Bills, Notes, Papers, or Writings relating thereunto, with intent to defraud his, her or their Creditors; every such Person so becoming Bankrupt, and being thereof lawfully convicted, shall suffer as a Felon, without Benefit of Clergy; and in such Case such Bankrupt's Goods and Estate shall go to, and be divided amongst the Creditors.

Certificate must be signed by four Parts in five, Number and Value.

4 & 5 Ann.

the Allowance thereby given, and the Certificate to be made, be signed by four Parts in five, in Number and Value, of the Creditors who have duly proved their Debts, or some others by them authorized thereunto.

All Securities given to induce a Creditor to sign a Certificate, are void.

The Commissioners to give Notice in the Gazette where the Creditors shall meet,

of Mortality to be at Guild-Hall) to choose an Assignee or Assignees of the Bankrupt's Estate, which shall be assigned by the Commissioners

To chuse an Assignee, and what he must do.

Where the Commissioners may choose an Assignee,

Who may be removed by the Creditors.

By another Act made 5 Anne. Sess. 2. Entituled, [An Act to explain and amend an Act of the last Session of Parliament for preventing Frauds frequently committed by Bankrupts,] it is enacted, That if any Person who shall become a Bankrupt within the several Statutes made against Bankrupts, or any of them, or any other Person, by or with his, her, or their Order, Consent or Privity, shall remove, carry away, conceal, destroy or embezzle any of the Goods, Monies or Effects, whereof he, she, or they, or any in Trust for him, her, or them, is, or are possessed of, or entitled unto, to the Value of 20*l*. or upwards; or any Books of Accounts, Bonds, Bills, Notes, Papers, or Writings relating thereunto, with intent to defraud his, her or their Creditors; every such Person so becoming Bankrupt, and being thereof lawfully convicted, shall suffer as a Felon, without Benefit of Clergy; and in such Case such Bankrupt's Goods and Estate shall go to, and be divided amongst the Creditors.

That no Person shall be discharged from his Debts owing at the Time of his Bankruptcy, or be entitled to any Benefit by the late Act made in the Fourth and Fifth of Her Majesty's Reign, unless

the Allowance thereby given, and the Certificate to be made, be signed by four Parts in five, in Number and Value, of the Creditors who have duly proved their Debts, or some others by them authorized thereunto.

That all Bonds, Bills, Notes or Contracts, or other Security given to, or to the Use of any Creditor, to induce him to consent to or sign such Allowance or Certificate, shall be void.

That the Commissioners, or the major Part of them, shall cause Notice to be given in the Gazette, and appoint a Time and Place for the Creditors to meet, (the Meeting for London and within the Bills of Mortality to be at Guild-Hall) to choose an Assignee or Assignees of the Bankrupt's Estate, which shall be assigned by the Commissioners to such Assignee, and none others; which Assignee shall be chosen by the major Part of the Creditors then present; and the Assignee so chosen shall keep Books of Accounts to which any Creditor may resort and inspect.

The Commissioners or the major Part of them, may as often as they shall see Occasion, appoint one or more Assignee of the said Estate, or any Part thereof, which Assignee may be removed or displaced at the Meeting of the Creditors, if the major

major Part shall think fit, which Assignee shall deliver up and assign all the Estate of the Bankrupt which is come to his Hands, to such other Assignee as shall be chosen as aforesaid; all which shall be as effectually vested in such new Assignee as if the first Assignment had been made to him; that if any Assignee shall for fourteen Days after Notice, refuse or neglect to make such Assignment and Delivery as aforesaid, then every such Assignee shall forfeit 100*l.* to be distributed amongst the Creditors over and besides the Value of such Money, Goods and Effects which came to his Hands by virtue of such Assignment; to be divided amongst the Creditors; the Action to be brought in any of the Courts of Record in Westminster.

That such Assignee or Assignees, or the major Part of them, are empowered to make Compositions with any Debtor to such Bankrupt where the same shall appear to be necessary and reasonable, and to take such reasonable Part as can be gotten in full Discharge of such Debt or Account.

That no Commission of Bankrupts shall be sued out upon the Petition of any one or more Creditor or Creditors, unless the single Debt of such Creditor doth amount to 100*l.* or upwards; or the Debt of two Creditors to 150*l.* and upwards; or the Debt of three or more Creditors to 200*l.* and upwards; and that the Creditors petitioning for such Commission, shall before such Commission granted give Bond to the Lord Chancellor, Lord Keeper, or Commissioners of the Great Seal in the Penalty of 200*l.* conditioned for the proving of his, or their Debt; and also for the proving of the Party a Bankrupt at the suing out of the Commission; and if such Debt or Debts shall not be really due, or the Party cannot be proved to be a Bankrupt at the Time; but on the contrary, it shall appear such Commission was taken out fraudulently or maliciously, then the Lord Chancellor, Lord Keeper or Commissioners of the Great Seal for the time being, may upon the Petition of the Party grieved assign such Bond to recompence him in Damages.

No Farmer, Grazier or Drover, or General Receiver of Taxes, shall be deemed a Bankrupt within this or any other Act.

This Act was temporary, but afterwards 7 Anne was continued for 5 Years, from the 25th of April 1709.

An Exposition of the 13 Eliz. cap. 7. of Bankruptcy. See the whole Case. 2 Rep. 25, 26.

An Inn-keeper, *Quatenus* an Inn-keeper, cannot be a Bankrupt. 3 Lev. 309, 310. Nor a Farmer, nor a Sutler, &c. Show. Rep. 269, 270, &c. Who shall, and who shall not. See Danv. 686, 687.

And must deliver up all Matters to the Assignee, to be chosen by the Creditors.

as if the first Assignment had been made to him; that if any Assignee shall for fourteen Days after Notice, refuse or neglect to make such Assignment and Delivery as aforesaid, then every such Assignee shall forfeit 100*l.* to be distributed amongst the Creditors over and besides the Value of such Money, Goods and Effects which came to his Hands by virtue of such Assignment; to be divided amongst the Creditors; the Action to be brought in any of the Courts of Record in Westminster.

The Forfeiture for the not doing of it.

by virtue of such Assignment; the Action to be brought in any of the Courts of Record in Westminster.

Westminster.

Where the Assignees may make Compositions.

and to take such reasonable Part as can be gotten in full Discharge of such Debt or Account.

What the Creditors Debts must be before Commission sued out.

or the Debt of two Creditors to 150*l.* and upwards; or the Debt of three or more Creditors to 200*l.* and upwards; and that the Creditors petitioning for such Commission, shall before such Commission granted give

What Bond must be entred into, and to whom before Commission sued out.

and if such Debt or Debts shall not be really due, or the Party cannot be proved to be a Bankrupt at the Time; but on the contrary, it shall appear such Commission was taken out fraudulently or maliciously, then the Lord Chancellor, Lord Keeper or Commissioners of the Great Seal for the time being, may upon the Petition of the Party grieved assign such Bond to recompence him in Damages.

The Bond may be assigned.

No Farmer, Grazier, Drover or Receiver General, shall be a Bankrupt.

The Continuance of this Act.

Exposition of the Stat. 13 Eliz. cap. 7. of Bankruptcy.

Inn-keeper cannot be a Bankrupt.

A Shoe-maker may be a Bankrupt.

No Farmer, Grazier, Drover or Receiver General shall be a Bankrupt. *Stat. 5 Anne, Sess. 2.*

The Commissioners are not to give a Witness a Copy of the Interrogatories, or of his Depositions, though he swears that he was illiterate, &c.

Commissioners must not bring Evidence in, to be examined before them by an Arrest; it is a Misdemeanor.

Court than the King's Bench, then the Court will grant an Attachment against the Commissioners. *Hill. 3 W. & M. B. R.*

Where Bankrupt's Goods are bound by the *Teste* of the Writ.

it should be otherwise, all Sales between the *Teste* and Return would be avoided. *1 Lev. 174.*

Goods extended before the Bankruptcy and delivered by *liberate* after the Bankruptcy, can't be sold by the Commissioners.

hath no absolute Property till the Delivery upon the *liberate*, and at the Return of the Writ he may refuse them if over valued; yet that is for the Benefit of the Conuzee. *Cro. Car. 148. pl. 3. 149.*

How Debts shall be assigned.

No Man bound to make a Discovery upon Oath of his Estate, until Interrogatories are exhibited against him.

is to draw up Interrogatories, and examine him thereupon; and if he shall then refuse to answer them, he may be committed: But because a Man was committed, no Interrogatories being offered to him, he was upon his *Habeas Corpus* discharged by the Court of King's Bench. *Mich. 9 W. B. R.*

A Shoe-maker may be a Bankrupt, for he lives upon his Credit by buying of Leather and selling it again in his Shop. *Cro. Car. 31. pl. 1.*

No Farmer, Grazier, Drover or Receiver General of Taxes, shall be deemed a Bankrupt within any of the Statutes by Stat. 5 Anne, Sess. 2.

The Court will not compel Commissioners of Bankruptcy to give the Witness a Copy of the Interrogatories, or of his Depositions, though the Man swears he was illiterate, and could not tell whether they wrote his Depositions right or no. *Hill. 8 W. B. R.*

Where Commissioners of Bankruptcy procure an Evidence to be arrested, and bring him in Custody to be examined by them; this is a Misdemeanor, for which an Information will lie, where the Arrest is by Process issuing out of any other

Court than the King's Bench. But if the Arrest were in the King's Bench, then the Court will grant an Attachment against the Commissioners. *Hill. 3 W. & M. B. R.*

Where it is said, that the Bankrupt's Goods are bound by the *Teste* of the Writ; that is, where the Writ is sued out the same Day that it bears *Teste*, but not if sued out afterwards: Because if it should be otherwise, all Sales between the *Teste* and Return would be avoided. *1 Lev. 174.*

Goods extended before the Party becomes a Bankrupt, and delivered by the *liberate* after he becomes a Bankrupt, can't be sold by the Commissioners, because they being extended are *quasi in Custodia legis*, so as the Conuzor can't dispose of them; and tho' by the Extent the Conuzee hath no absolute Property till the Delivery upon the *liberate*, and at the Return of the Writ he may refuse them if over valued; yet that is for the Benefit of the Conuzee. *Cro. Car. 148. pl. 3. 149.*

Where Commissioners assign over a Debt (for the Purpose) of 100*l.* due from J. S. Though this is a Debt due upon a Judgment, yet this Assignment by general Words shall be sufficient. *Mich. 8 W. B. R.*

Where Commissioners commit a Man to Prison for not making a Discovery of his Estate upon Oath, without exhibiting of Interrogatories; this Commitment is illegal, for that they have not pursued the Direction given by the Statute, which

is to draw up Interrogatories, and examine him thereupon; and if he shall then refuse to answer them, he may be committed: But because a Man was committed, no Interrogatories being offered to him, he was upon his *Habeas Corpus* discharged by the Court of King's Bench. *Mich. 9 W. B. R.*

An Executor arrests a Man before Probate of the Will, but he proves it before the Return of the Writ; afterwards the Defendant becomes a Bankrupt. And it was adjudged, That it was not this Arrest, but some other subsequent Matter which could make the Defendant a Bankrupt; for the Plaintiff had not any Cause of Action against the Defendant at the Time of the Arrest. *Mich. 34. Car. 2.*

Two Partners in Trade, and one of them becomes a Bankrupt; the Assignee shall have no more than a Moiety jointly with the other Partner.

Executor arrests a Man before Probate, but it is proved before the Return of the Writ.

Two Partners, one is a Bankrupt, the Assignee shall have but his Moiety.

One committed for not answering Interrogatories, until he shall be delivered by due Course of Law, is naught: It should have been, until he shall answer the Interrogatories.

One committed for not answering Interrogatories, until he shall be delivered by due Course of Law, is naught: It should have been, until he shall answer the Interrogatories.

A Man was committed by Commissioners of Bankruptcy, for not answering of Interrogatories; and the Commitment was, until he shall be discharged by due Course of Law. This was held a void Commitment: For that it should have been, until he should have answered the Interrogatories; and for that Reason the Party was discharged. *8 W. B. R.* So also where it is said that "until he submit himself to the Authority of the Commissioners," is a void Commitment. *5 Mod. 309;* but see now the Stat. of 4 & 5 Anne 1 Sess. set forth before, how the Commitment is to be.

Note, The Party to be examined need not to pay an universal Obedience to the Commissioners, so as to answer all Questions, but only what he knows of any Person's carrying away of any Part of the Bankrupt's Estate, but not by himself. *5. Mod. 309.* Now see the Statute of 4 & 5 Anne, ante.

To what a Person summoned before Commissioners of Bankrupt is to answer.

5. Mod. 309. Now

The Commissioners need not ask the Party whether he will be examined or not; for the Statute impowers them to examine upon Interrogatories, which they must prepare and tender to him ready drawn, otherwise the Commitment will be void; and false Imprisonment will lie against them for it. *5 Mod. 368. Ante.*

The Interrogatories must be rendered, and not to answer without them.

Assumpsit lies not for Assignees of Commissioners of Bankrupts for Money for which the Bankrupt's Goods were sold, but only Trover for the Goods. *3 Lev. 192.*

Assumpsit lies not for Assignees for the Money for which the Bankrupt's Goods were sold, but Trover.

A Bankrupt may bring an Action in his own Name and recover, unless the Matter for which he brings the Action is assigned over by the Commissioners to the Assignees. *Lutw. 701.*

A Bankrupt may recover in his own Name, until assigned over to Assignees.

Commissioners of Bankrupts cannot, after an Assignment of Goods to the Assignees, bring in the Person who claims the Goods, to swear whether they are his Goods or no: Because by the Assignment they have executed their Authority.

Commissioners cannot, after Assignment, bring in the Person who claims the Goods to swear.

What Alterations are now made as to Bankrupts. See the two Statutes, one in the first, and the other in the Second Session of the Parliament in the 4 & 5 Anne, entituled, "An Act to prevent Frauds frequently committed by Bankrupts."

Stat. 4 & 5 Anne, what Alterations are made as to Bankrupts.

Where

What shall make a Man a Bankrupt.

Where a Man is indebted 100*l.* or more, and he pays it not, nor compounds for it, within six Months next after it becomes due, and the Debtor be arrested for the same, or being arrested for Debt, lies in Prison two Months upon that or other Arrest for Debt, or being arrested for 100*l.* or more, escapes out of Prison, or is enlarged by putting in of

21 Jac. cap. 19. par. 2.

When the Commission to be sued out to arrest a Purchaser.

21 Jac. cap. 19. sect. 14.

Payment to a Bankrupt before Notice, is good.

1 Jac. 1. cap. 15. Sect. 14.

May commit upon Refusal to answer Interrogatories.

1 Jac. 1. cap. 15.

The Bankrupt's Wife shall be sworn.

How to proceed against the Person.

13 Eliz. cap. 7. Sect. 9.

1 Jac. 1. cap. 15.

21 Jac. cap. 19. Sect. 7.

Money in Execution belongs to the Bankrupt.

disposed of by the Commissioners, but the Bankrupt shall have it, for no Body can acknowledge Satisfaction but him. *Cra. Car.* 166, 176, 148.

May sell Goods without Deed inrolled, but not Lands.

To what Conveyances of his Lands it shall extend.

13 Eliz. cap. 7.

Where there are fraudulent Grants or Conveyances.

21 Jac. cap. 19.

A Covenant to renew a Lease is not assignable.

the Commissioners

Whether an Equity of Redemption is assignable.

Where a Man is indebted 100*l.* or more, and he pays it not, nor compounds for it, within six Months next after it becomes due, and the Debtor be arrested for the same, or being arrested for Debt, lies in Prison two Months upon that or other Arrest for Debt, or being arrested for 100*l.* or more, escapes out of Prison, or is enlarged by putting in of common or hired Bail, shall be adjudged a Bankrupt from his first Arrest. 21 Jac. cap. 19. par. 2.

Also by the same Statute, Sect. 14. No Purchaser shall be impeached, unless the Commission be sued forth within five Years after he becomes a Bankrupt.

No Debtor shall be prejudiced by Payment of his Debt to any Bankrupt, before that he hath Notice that he is so. 1 Jac. 1. cap. 15. Sect. 14.

The Commissioners may examine a Bankrupt upon Interrogatories, and commit him to Prison if he refuses to be sworn, until he shall submit and be examined. 1 Jac. 1. cap. 15.

The Wife of a Bankrupt shall be examined against her Husband, and for not coming, or refusing to be sworn, shall be committed. *Ibid.*

How the Commissioners shall proceed against the Person of a Bankrupt. See 13 Eliz. cap. 7. Sect. 9. 1 Jac. 1. cap. 15. 21 Jac. cap. 19. Sect. 7. *Darr.* 690.

Money of a Bankrupt upon an Execution in the Sheriff's Hands being in *Custodia Legis*, cannot be

Commissioners may sell Goods without Deed inrolled, but Lands they cannot. 2 Co. 26. a. 1 Vent. 360, 361.

The Act for Sale of his Lands, shall not extend to Lands *bona fide* conveyed by him before his Bankruptcy; but it shall extend to Lands conveyed to the Use of himself or his Heirs, or of such who were consenting to this fraudulent Purpose. 13 Eliz. cap. 7.

Where a Conveyance is made to his Children or others, or he transfers his Debts in other Mens Names, except upon the Marriage of a Child (both Parties being of Age) or for some valuable Consideration, the Commissioners may sell. 21 Jac. cap. 19.

The Lessor covenants with the Lessee and his Assignees to renew, the Lessee becomes a Bankrupt, assign over this Covenant; their Assignment is void, it not being assignable. *Chanc. Rep.* 71. It is there a *Quare* whether they can assign over an Equity of Redemption.

They

They may sell all entailed Lands in Possession, Reversion or Remainder, except entailed in the Crown of the Gift of the King; and this shall bind the Issue in Tail, and all others, which a Common Recovery might cut off. 21 Jac. cap. 19. Sect. 12.

Shall bind all Estates Tail.

21 Jac. cap. 19. Sect. 12.

The Commissioners are to sell, or otherwise order the Bankrupt's Lands, for Payment of Creditors, viz. to every one his rateable Part according to the Quantity of his Debt. 13 El. c. 7. Sect. 2.

How to make Distribution.

13 El. cap. 7. Sect. 2.

The Commissioners shall, upon the Bankrupt's Request, declare how they have bestowed his Lands, and render the Overplus to the Bankrupt. Ibid.

Commissioners shall account to the Bankrupt, and pay him the Overplus.

A Creditor within four Months, or before Distribution, may come into the Statute. 1 Jac. c. 15. Sect. 4. Note, Distribution cannot be till after Four Months.

When Creditors may come in.

1 Jac. c. 15. Sect. 4.

After a first Distribution, no Creditor can come in to disturb it, but may come in for the Residue, whereof no Distribution was made. 20 Chanc. Rep. 154.

A Creditor who came not into the first, may come into the second Distribution.

A Bankrupt dies after a Commission dealt in by the Commissioners, and before Distribution; the Commissioners may proceed, as if living. 1 Jac. cap. 15. Sect. 18. And if the Bankrupt dies, and after the King dies, a new Commission may be granted, and they may proceed upon the new Commission, where the old left off. Chanc. Rep. 193, 194.

Where the Bankrupt dies.

Where the King dies.

Where Commissioners may plead the general Issue, and what those acting under them must plead. See Danv. 694.

What may be pleaded.

Note, The Act 7 Anne. above-mentioned being expired, it was revived by an Act made 3 Georgii. cap. 12. to continue for seven Years, and from thence to the End of the next Session of Parliament.

Bargain and Sale.

Attornment.
Sec. Enrollment.
Uses.

Bargain and Sale, what.

Bargain and Sale is where a Recompence is given by both the Parties to the Bargain: As if one bargains and sells his Land to another for Money; here the Land is a Recompence to him for the Money, and the Money is a Recompence to the other for the Land.

The Buyer ought to pay the Money before the Seller is bound to deliver.

If one buy a thing of another, he that buys it ought to pay the Money he hath agreed to pay for it, before the Seller of it is bound to deliver it. (*Pasch. 23 Car. 1. B. R.*) For that is the Contract

betwixt the Buyer and the Seller, I will give you so much Money, and you shall give me such a Thing; and there is no difference betwixt buying of a Thing for Money, and bartering or exchanging one Thing for another; but if there be a Time set for the Payment of Money, then the Buyer hath an Interest in the Goods presently upon the Contract.

A Bargain made by Parol may be dissolved by Parol only.

One may upon a good Consideration dissolve by Parol only, an absolute Bargain made by Parol. (*Pasch. 24 Car. B. R.*)

A Man may sell his Privilege given by the Law as his Birth-right.

One may sell his Privilege given him by the Law as his Birth-right, as a free-born Subject, for a good Consideration. (*Trin. 24 Car. B. R.*) For it shall be intended that he hath a sufficient Recompence for it, and so hath no Wrong done him by it; but *Quare*, what Privileges he may sell.

Fine levied of the Honour of Baronet.

In 32 Car. 2. A Gentleman, who was a Baronet by Descent, levied a Fine of his Honour to another Gentleman, which Gentleman, to whom the Fine was levied, enjoys it to this Day, and takes Place in Seniority from the Date of the Patent, as if it had been granted to an Ancestor of his own.

Bargain and Sale.

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If one that is indebted, do really and bona fide sell his Lands, though it be with an intent to avoid the Payment of his Debts; this Sale is good, if the Vendee be not privy to his Intent. (*Mich. 24. Car. B. R.*) For as to the Vendee, there is no Fraud in the Case, and he comes to the Lands upon a valuable Consideration.

Where Sale of Lands to avoid Payment of Debts, is good.

the Case, and he

A Covenant in Consideration of Money to stand seized to the Use of another in Fee, if the Deed be enrolled within six Months, is a good Bargain and Sale, although the Words *Bargain and Sell* are not in the Deed. *Bondel's Case, 7 Rep. 40. b.*

Where a Bargain and Sale is good, though the Words *Bargain and Sell* are not in the Deed.

A Bargain and Sale of a Term, or other Chattel, need not to be inrolled. *Ibid. 44. and 5 Rep. 113.*

Bargain and Sale of a Chattel need not be inrolled.

A Bargain and Sale of the Remainder of a Term, or a future Interest, is good without Attornment. *Heyward's Case, 2 Rep. 36.*

Of a Remainder of a Term good without Attornment.

Lands cannot by the Common Law, nor by 27 H. 8. pass from the King by Indenture of Bargain and Sale inrolled, because there cannot pass any Use; for the King cannot be seized to an Use. *Cro. Jac. 30. pl. 21.*

The King cannot pass Lands by Bargain and Sale inrolled, and why.

There must be a good Consideration of Money to raise an Use by Deed of Bargain and Sale inrolled, which Inrollment must be within six Months. *1 Leon. 170. Case 237.*

What makes a good Deed of Bargain and Sale.

Deeds of Bargain and Sale inrolled, were ordered and directed by 27 H. 8. cap. 16.

Ordered by 27 H. 8. c. 16.

A Bargain and Sale made by one who is not in Possession, nor receives the Rents, though it be by Deed inrolled in Consideration of Money, is not good, if there be no Livery thereupon. (*Mich. 23. Car. 2.*) But if there be Livery, it passeth; for the making of the Livery puts the Bargainee into Possession: So likewise if the Bargainor enters and takes Possession, and then seals and delivers the Deed upon the Land: But if the Bargainor be in Possession, or receives the Rents, then the Estate will well pass by Deed inrolled, without Livery.

Where a Bargain and Sale must be executed upon Land, tho' inrolled.

A Bargain and Sale made off from the Land, is not sufficient to make a Claim, and then pass a Remainder. *2 Rep. 54. a.*

Bargain and Sale off from the Land, how to enure.

An Estate doth not pass by a Deed of Bargain and Sale, it is only an Use. See Title Uses.

What passes by a Bargain and Sale.

Where the Words *Bargain and Sell*, without mentioning any Money, in Consideration of natural Affection, shall operate as a Covenant to stand seized *2 Lev. 9. 10.*

How a Bargain and Sale, in Consideration of natural Affection, shall operate.

A Grant of a Rent for Money and natural Affection, how to operate, whether as a Bargain if inrolled, or as a Covenant to stand seized, if duly pleaded, and how to be pleaded. *2 Lev. 292.*

A Grant for Money, and natural Affection, how to operate.

How to be pleaded.

There.

No Inrollment to a Bargain and Sale for Years.

Where the Deed must be inrolled, and where not.

204. 1 Lev. 56. per Twisden. Affection is part of the express Consideration, and where not:

By what Words an Estate shall pass, where the Deed is inrolled.

By the Word *Dedi*, for Money and Inrollment.

A Bargain and Sale, and before Inrollment a Fine is levied, shall pass by the Fine.

it should take Effect by the Deed, or Fine, or Feoffment? If by the Deed, there needed no Attornment of the Lessee; if by the Fine or Feoffment, the Lessee must attorn: Adjudged, that he shall take by the Fine or Feoffment, which are Common Law Conveyances, and they shall be preferred. *Hinde's Case*, 4 Rep. 70. b. 71. a. b.

A Bargain and Sale inrolled, and Livery afterwards, how it shall pass.

by the Inrollment, not by the Livery. 3 Leon. Case 39. So also in the Case of a Fine. 4 Rep. 70. b. 71. a.

A Bargain and Sale inrolled, in Consideration that he was bound for him, signifies nothing; but it would have been otherwise by Covenant to stand seised.

Bargain and Sale was because the Vendee was bound for him, yet that had not been good without apt Words to raise an Use by way of Covenant to stand seised. *Cro. Eliz.* 394. pl. 19.

The Bargainee hath such a Possession, that he may surrender, attorn, release, &c. But not to bring Trespass sans actual Entry.

Where a Bargain and Sale is well executed:

There needs no Inrollment to a Bargain and Sale for Years, that executes by the Statute. 2 Rep. 35. b.

36. 4. If Lands are passed for Money only, the Deed ought to be inrolled; but if for Money and natural Affection, it will pass without Inrollment. *Style*

And a Diversity taken; where natural Affection is part of the express Consideration, and where not:

Where the Words are, Give for Money, Grant for Money, confirm for Money, agree for Money, covenant for Money, if the Deed be duly inrolled, the Land shall pass. 3 Leon. Case 39. *Cro. El.* 166. pl. 2.

By the Word *Dedi*, if the Deed be inrolled, and there be a Consideration of Money, it will pass the Estate. 4 Leon. Case 224.

A Bargain and Sale is made of a Reversion, and before the Inrollment a Fine is levied, or a Feoffment made by the Bargainor to the Bargainee, then the Deed is inrolled; the Question was, Whether

it should take Effect by the Deed, or Fine, or Feoffment? If by the Deed, there needed no Attornment of the Lessee; if by the Fine or Feoffment, the Lessee must attorn: Adjudged, that he shall take by the Fine or Feoffment, which are Common Law Conveyances, and they shall be preferred. *Hinde's Case*, 4 Rep. 70. b. 71. a. b.

A Bargain and Sale for Money was made, and a Letter of Attorney in it to make Livery, the Deed is inrolled; a Month after the Inrollment the Attorney makes Livery, the Bargainee shall be in by the Inrollment, not by the Livery. 3 Leon. Case 39. So also in the Case of a Fine. 4 Rep. 70. b. 71. a.

A Man reciting in an Indenture, That J. S. was bound for him in a Recognizance of 500 l. he for divers good Considerations bargains and sells to him and his Heirs; the Deed is inrolled, and no Money found to be paid; it was adjudged, that the Deed was void: Also, if he had shewn that the

Bargain and Sale was because the Vendee was bound for him, yet that had not been good without apt Words to raise an Use by way of Covenant to stand seised. *Cro. Eliz.* 394. pl. 19.

If a Man bargains and sells Land whereof he is seised, the Bargainee hath presently such a Possession, that he may surrender, attorn, release, &c. but he cannot upon this Possession bring Trespass without an actual Entry, or the Deed sealed upon the Land. *Carter's Rep.* 66.

If one bargains and sells Lands, of which another is in Possession, and claims Title to them, this Bargain and Sale is not good, because it is a litigious Title,

Bargain and Sale

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Title, the buying whereof the Law doth not allow, for this should be a Means to nourish Suits in Law, and the End of the Law is to settle Peace and quiet Possession: But if he had entred and delivered the Deed upon the Ground,

or made a Letter of Attorney for the doing thereof upon the Ground, which was accordingly done, then if the Bargainor had a good Title, the Deed is well executed.

A Bargain and Sale for Money in the Premises, *Habendum* after the Death of the Bargainor, and inrolled within fix Months, shall pass a present Estate in the Grant, and the *Habendum* shall be void.

3 *Lev. 229.*

A Bargain and Sale of a Term granted by him who was seized of the Inheritance, is good, without Attornment. *Heyward's Case, 2 Rep. 36.* But if the Bargain and Sale was made by an Assignee of a Lessee, formerly, there must be an Attornment: Because this is not executed by the Statute of Uses, which executes only where the Grantor is seized, not possess'd: But Attornment is now supplied by a late Statute made 4 & 5 *Anne*; which see in Title Attornment.

Tenant in Tail by Deed grants all his Estate which he hath in the Land, *Habendum* all his Estate to the Grantee and his Heirs for ever, and delivers Seisin accordingly; the Grantee hath but an Estate for the Term of the Life of the Tenant in Tail: This Bargain and Sale is a rightful Estate, and discontinues neither the Entail, or any Remainder. *Litt. sect. 613.* Note, It is Grants all his Estate: But if he had enfeoff'd him of the Land, that had made a Discontinuance. *Litt. sect. 595.* So note a Difference, where it is a Grant of his Estate, and where it is a Feoffment of his Lands: For his Estate that he could grant, was only for his own Life; but if he had taken upon him to make a Feoffment of the Land, there it would have been a Discontinuance: Because he did more than by Law he could do.

The Statute of *Inrollments* says, That a Deed of Bargain and Sale shall not vest, unless it be inrolled; and when it is inrolled, the Estate vests not by the Statue of *Inrollments*, but by the Statute of *Uses* presently. *Hob. 136. Cro. Jac. 408.*

If several seal the Deed, and but one acknowledge it, and thereupon the Deed is inrolled; this is a good Inrollment within the Statute. *Style 462.*

The Bargainee before Inrollment may suffer a Recovery, and this is warranted by the common Practice. 1 *Ventr. 361.*

And where not, where the Bargainor is in Possession.

Where the Bargain and Sale shall pass by the Premises, and the *Habendum* in future shall be void.

A Bargain and Sale of a Term, made by him who was seized of the Inheritance is good, sans Attornment: But if made by an Assignee of a Lessee, it is not.

4 & 5 *Anne.*

Of Grants, and Bargains and Sales, made by Tenants in Tail.

When a Discontinuance, and when not.

When and how a Deed of Bargain and Sale shall vest.

27 *D. 8. cap. 16.*

If only one acknowledge the Deed, it is good.

May suffer a Recovery before Inrollment.

Bargain and Sale.

The Bargainee shall have the Rent due after the Date, and before the Inrollment of the Deed.

So also where he levies a Fine.

The Deed inrolled after the Bargainee's Death, and good.

A Lease before Inrollment, not good.

How to plead a Bargain and Sale.

How to plead it, where no Consideration of Money is express'd.

But if the Deed mentions a competent Sum of Money, it will do.

Must say, that it was inrolled *infra sex Menses*.

A Bargain and Sale by Deed inrolled cannot be to the Use of any but the Bargainee.

The Use is void.

the Consideration and Sale implies the Use to be in him only. *Benl. Rep. 61, 62.*

A Man leases for Years, and then bargains and sells the Reversion, the Bargainee shall have the Rent incurred after the Date of the Deed, and before the Inrollment. *Latch 151.*

So where he levies a Fine before Inrollment, and afterwards it is inrolled, and good. *4 Leon. 4.*

The Deed is inrolled within six Months, but it was after the Bargainee's Death; yet it is good, and shall vest *ab initio* by the Statute of *Uses. 136.*

But a Lease made by the Bargainee before Inrollment, held not to be good. *Cro. Car. 110.* But see *1 Vent. 360, 361.*

In pleading of a Bargain and Sale, you must say where it was inrolled. *Cro. Jac. 291.*

In pleading of a Bargain and Sale where no Consideration of Money is express'd, it ought to be supplied by an Averment, that it was made for Money; for the general Words, *for divers good Considerations*, will not do. But if the Deed mentions a competent Sum of Money, it will do. *Mo. Cases 777.*

Also you must say, That it was inrolled within six Months; for *debito modo secundum formam Stat.* will not do. *Aleyn 19.*

A Man bargains and sells his Land for Money by Deed enrolled to another in Fee; *Habendum* to the Bargainee in Fee, to the Use of the Bargainor for Life, Tail, or in Fee, or to the Use of another; this Limitation of the Use or Uses is void, and it shall be to the Use of the Vendee in Fee, because the Consideration and Sale implies the Use to be in him only. *Benl. Rep. 61, 62.*

Bar in Action.

See **Actions**
Outlawry
Pleas and Pleadings.

BAR is when the Defendant in any Action pleads a Plea, which is a sufficient Answer, and destroys the Action of the Plaintiff for ever.

A Plea in Bar which does not give a full Answer to all the Matter contained in the Plaintiff's Declaration, is not a good Plea. (21 Car. 1. B. R.) viz. If it answer not all the material Matter of it:

For it appears by the Matter of the Declaration unanswered, that the Plaintiff has Cause of Action, notwithstanding what the Defendant has said to the contrary.

If the Plaintiff reply to the Defendant's Plea in Bar, this Replication is a Confession in Law, that the Plea in Bar is a good Plea as to the Matter of Form, though it really is not good upon Demurrer. (Trin. 23 Car. 1. B. R.)

For the Plaintiff has slipt his Advantage of demurring to the Defendant's insufficient Plea by replying to it.

Every Plea in Bar ought to have an apt Conclusion by praying Judgment, *Si Actio, &c.* 11 Rep. 52. a. *Ljford's Case.*

A Plea in Abatement of Ancient Demesne, &c. must be pleaded before Imparlance, because when the Defendant imparls, he admits the Court to have Jurisdiction of the Cause.

A Bar to a common Intent is good. *Keil. 53. b.*

Where a Man is barr'd in any real or personal Action, by Judgment, upon Demurrer, Confession, or Verdict, he is barr'd as to this or the like Action for the same Thing for ever. 6 Rep. 7.

A Judgment for the Defendant in Trespass, upon a special Verdict, is a good Bar to an Action of Trover for the same Goods. *Show. Rep. 146.* See 2 *Ventr. 169, 170.* and *Raym. 472.* seems *contra.*

A Plea in Bar must fully answer all that is contain'd in the Plaintiff's Declaration.

Replication to the Defendant's Plea in Bar is a Confession that 'tis good, tho' it be not so upon Demurrer.

Advantage of demurring to the Defendant's insufficient Plea by replying to it.

Proper Conclusion of a Plea in Bar.

When a Plea in Abatement ought to be pleaded

Bar to a common Intent, is good.

Once barr'd by Verdict or Demurrer, is a Bar for ever.

A Recovery in Trespass, is a good Bar in Trover.

Altho'

Where once a Bar,
and ever a Bar holds not.

Where a wrong Action
is brought.

In Trover Recovery
against one is a good Bar
for all the rest.

Execution; and held a good Plea. For he having Judgment against one for Damages certain; that which was uncertain before, is reduc'd in rem judicatam. *Cro. Jac. 74. Yelv. 67. Moore 762.*

Damages recovered in
an Assumpsit may be a Bar
to a Debt.

The Plaintiff shall not
be barr'd where Judgment
is given upon a
Fault in the Declaration,
and not upon the Merits
of the Cause.

An Action was brought, and there was a Fault in the Declaration, in the not assigning of a good Breach in a Covenant; whereupon there was, upon a Demurrer, Judgment given, *quod querens nil capiat per Billam sed pro falso clamore suo sit inde in Misericordia*; afterwards the Plaintiff brings another Action for the same Matter, and assigned the Breach, as it ought to be; whereupon the Defendant pleads the former Action brought, and that it was barr'd by the Judgment upon the Demurrer. The Plaintiff replied, That the Judgment was not given upon the Merits of the Cause, but upon a Mistake in the Declaration, in not saying (and so set forth the Cause.) The Defendant demurred, alledging, That the first Judgment was a Bar: But the Court gave Judgment for the Plaintiff. *Coppin and Slaymaker: Hill. 34 & 35 Car. 2. Rot. 847. B. R. Dyer 371. 1 Mod. 207. 2 Mod. 42.*

Where *Auter Foits* acquitted or convicted is a good Plea; and where not.

It is a Maxim, That the Life of a Man shall never be twice put in Jeopardy for one and the same Offence; and this is the Reason that *Auter Foits* acquitted or convicted for the same Offence, is a good Plea; yet this is to be intended of a lawful Acquittal or Conviction: For if it were not lawful, his Life was never in Jeopardy; and therefore where an Indictment is insufficient, the Party was never lawfully acquitted; for when an Offender is discharged upon an

insufficient Indictment, there the Law had not its End, nor the Life of the Party in Jeopardy. *Co. 4 Rep. 45. a.*

It is no Plea where the Indictment is insufficient, and why.

Where a Bar is insufficient in Matter, and where in Form only, how it is to be.

If the Bar be insufficient in Matter, so that it may appear by it, that the Plaintiff hath good Cause of Action, which is not avoided by the Bar, Judgment shall be given for the Plaintiff upon the Defect of the Bar; but if the Bar be sufficient for the Matter, but insufficient for the Form, and there be no Demurrer upon it, but a Replication, there no Advantage shall be taken of the Defect of the Bar. *Popham 42.*

Altho' once a Bar in a personal Action is a Bar perpetual, that is to be understood when it is a Bar to the Right, not where the Action is misconceived. *Cro. Jac. 15. pl. 20. or a wrong Action brought. Cro. Eliz. 668.*

In Trover the Defendant pleads, That the Plaintiff brought his Action of Trover against J. S. for the same Matter and recovered, and had him in

Execution; and held a good Plea. For he having Judgment against one for Damages certain; that which was uncertain before, is reduc'd in rem judicatam. *Cro. Jac. 74. Yelv. 67. Moore 762.*

Damages recovered in an Assumpsit, may be a Bar of a Debt. *Cro. Jac. 110. pl. 7.*

An Action was brought, and there was a Fault in the Declaration, in the not assigning of a good Breach in a Covenant; whereupon there was, upon a Demurrer, Judgment given, *quod querens nil capiat per Billam sed pro falso clamore suo sit inde in Misericordia*; afterwards the Plaintiff brings another

Action for the same Matter, and assigned the Breach, as it ought to be; whereupon the Defendant pleads the former Action brought, and that it was barr'd by the Judgment upon the Demurrer. The Plaintiff replied, That the Judgment was not given upon the Merits of the Cause, but upon a Mistake in the Declaration, in not saying (and so set forth the Cause.) The Defendant demurred, alledging, That the first Judgment was a Bar: But the Court gave Judgment for the Plaintiff. *Coppin and Slaymaker: Hill. 34 & 35 Car. 2. Rot. 847. B. R. Dyer 371. 1 Mod. 207. 2 Mod. 42.*

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a good Plea; yet this is to be intended of a lawful Acquittal or Conviction: For if it were not lawful, his Life was never in Jeopardy; and therefore where an Indictment is insufficient, the Party was never lawfully acquitted; for when an Offender is discharged upon an insufficient Indictment, there the Law had not its End, nor the Life of the Party in Jeopardy. *Co. 4 Rep. 45. a.*

If the Bar be insufficient in Matter, so that it may appear by it, that the Plaintiff hath good Cause of Action, which is not avoided by the Bar, Judgment shall be given for the Plaintiff upon the Defect of the Bar; but if the Bar be sufficient for the

Matter, but insufficient for the Form, and there be no Demurrer upon it, but a Replication, there no Advantage shall be taken of the Defect of the Bar. *Popham 42.*

The Rule in personal Actions, once barr'd and ever barr'd, must be intended where it is a Bar to the Right, not where the Action is misconceived. Co. 6. Rep. 8.

Where once barr'd and always barr'd, holds good.

If an Action of Debt be brought, and the Defendant impairs all the next Term, yet after his Imparance he may plead in Bar of the Action, that the Plaintiff is outlawed, the Action being in Debt: For an outlawed Person cannot take Advantage of the Law, so long as he continues outlawed: But if the Action were in Trespass or Case, it must be pleaded in Abatement only; because, when the Action is in Debt, it is reduced to a Certainty, and the Debt is forfeited to the King, and consequently a good Bar: But it is not so where only Damages are to be recovered.

Where Outlawry must be pleaded in Bar, and where in Abatement.

Where a Plea in Bar contains a Title, there *de son Tort sans tiel cause*, is a naughty Replication. 2 Lev. 307. See Title *De Injuria sua propria*.

Where *de Injuria sua propria* is an ill Replication.

The Plaintiff pleaded in Bar a Conusance in another Replevin, and naught; because he had not averred, that the other Conusance was with the Master's Consent.

Where Conusance in another Replevin pleaded in Bar.

A Bar not answered, avoided or traversed, was an Exception to a Replication. *Lutw.* 1342. And allowed by the Court to be a good Exception.

A Bar must be answered, avoided or confessed.

A Bar ought not to be answered by Argument. 1 Leon. 77.

How a Bar ought not to be answered.

Where the Bar is naughty, yet if the Plaintiff shews no Title in his Declaration, he shall not have Judgment. *Hob.* 128.

Plaintiff shall not have a Judgment, though the Bar be naughty, if his Declaration be not good.

A Recovery in an *Assumpsit* will be a good Bar in Debt for the same Thing. Co. 4 Rep. 94. b.

Recovery in an *Assumpsit* is a good Bar in Debt.

In Debt for Rent upon a Lease for Years, the Defendant may plead in Bar a Covenant, that the Lessee shall deduct so much for Charges; for the Covenant being in the same Deed and executory, is pleadable in Bar, to avoid Circuity of Action. 1 Lev. 152.

Where a Covenant may be pleaded to an Action of Debt.

If a Declaration be faulty, and the Plaintiff demurs to the Plea in Bar, by which he confesses the Fact, if well pleaded, he is estopped thereby, and shall have no other Action. 1 Mod. 207. But if the Plea is not good, it can be no Estoppel, but the Plaintiff may have another Action. *Ibid.*

Where the Plaintiff is estopped to have another Action, and where not.

A Verdict without a Judgment entered upon it, cannot be pleaded in Bar of another Action. 2 Brownl. 122.

What is a Bar to another Action.

Baron and Feme.

Abatement.

Coppyhold.

Discontinuance.

Execution.

See Fine.

Marriage.

Power.

Recovery.

Trials.

No Feme-Covert can be barr'd of her Freehold, without due Examination.

NO Feme-Covert shall be barr'd of her Inheritance of Freehold, by her Confession, but where she is examined by the Chief Justice of the Common Bench, or Court of Common Bench, or Persons having Power by the King's Writ to examine her. 10 Rep. 42. b.

If a Feme-Covert be served with a *Subpoena*, and do not appear, Husband shall be sued.

If a Feme-Covert be served with a *Subpoena* to appear, and her Charges tendered; if she doth not appear, her Husband shall be sued upon the Statute for her not appearing. *Leon. 1 Rep. 122, 123. Cro. Car. 376 to 388.*

If Feme-Sole be indebted, and marries, she must be sued jointly with her Husband; and if the Baron dies pending the Suit, she may be sued after his Death. But if Baron be not sued in the Life of his Wife, he can never be sued for it after.

If a Feme-Sole be indebted to J. S. and afterward the Feme doth marry, this Debt is become, by the Marriage, the Debt of the Husband and of the Wife, viz. the proper Debt of the Wife, and the Debt of the Husband in right of his Wife, and the Wife must be sued for this Debt jointly with her Husband; and if the Husband die pending the Suit, yet is not the Debt gone, but she may be sued for it after the Death of her Husband; but if the Husband be not sued for this Debt during the Life of his Wife, he can never be sued for it after her Death, *Pasch. 24 Car. and Trin. 24 Car. B. R. viz. by a new Action.*

Where

Where a Judgment is recovered against a Woman *dum sola*, and afterwards she takes Husband, and a *Scire facias* is sued out against the Husband and Wife, and Execution is adjudged upon this *Scire facias*, and after the Year and a Day other *Scire facias*'s are sued out against the Husband and Wife, and Judgment against them, *quod habeat Executionem*; but before Execution the Wife died, and afterwards upon a *Scire facias* against the Husband, and Execution adjudged thereupon, and upon a Writ of Error brought to reverse the Judgment, the Judgment was affirmed, for that the Husband was bound by the first Judgment *quod habeat Executionem*. *O Bryan and Ram's Case*, in B. R. 4 Jac. 2.

Judgment against a Woman *dum sola*; she marries, and *Scire facias* is sued out against Husband and Wife. She dies before Execution, afterwards a *Scire facias* against the Husband, and on Writ of Error brought the Judgment was affirmed.

If a Writ be sued out against Husband and Wife, and the Wife only be arrested and detained in Prison, she shall file a Common Bail, and have a *Superfedeas* to discharge her; but if her Husband only be arrested, he must appear for himself and his Wife, *Per Magistrum Livesay, & alios, &c.*

Writ against Husband and Wife: Wife only arrested, she shall have a *Superfedeas*. But contra, if Husband only be arrested.

Pasch. 21 Car. 2.

The Husband shall not have an Action singly by himself for the beating of his Wife, unless he lay a *per quod consortium amisit* in his Declaration.

Husband cannot have Action alone for beating his Wife, unless he lay a *per quod consortium amisit*.

The Usage is, in a Common Recovery suffered by Baron and Feme, to sue out a *Dedimus* for the taking of her Examination, as in case of a Fine. 10 Rep. 43. a.

Feme examined upon a Recovery.

If Baron and Feme acknowledge a Statute, Recognizance or Deed to be inrolled, it is void as to the Feme, because there is no such Writ pending against the Baron and Feme; whereupon the Feme may by Law be examined. 10 Rep. 43. a.

No Statute, Recognizance or Deed acknowledged by Baron and Feme to be inrolled, shall bind the Feme, and why.

And none have Power to examine a Feme-Covert without Writ. 10 Rep. 42. b.

Who may examine a Feme-Covert.

An Action lies against the Husband for Goods delivered to his Wife, if she usually bought Goods, and her Husband paid for them; or if it can be intended or proved that those Goods came to the Husband's Use: For then he hath the Benefit of them, and in Honesty and Justice ought to pay for them. 1 Lev. 4, 5. 2 Lev. 16.

An Action lies against the Husband for Goods delivered to the Wife, if they came to his Use.

By the Custom of London, where the Feme trades by herself in one Trade, with which her Husband doth not meddle, and buys and sells in that Trade, there the Feme shall be sued, and the Husband named only for *Consortium*; and if Judgment be given against him, Execution shall be sued only against the Feme. *Cro. Car. 68. pl. 4. 69.*

What the Custom of a Feme-Sole Merchant in London is.

The Question was, Whether the Widow of Serjeant Davies, who was the Daughter of a Peer, should have the Jewels she wore in her Husband's Lifetime as her *Paraphernalia*, or no? The Court was

Whether a Widow, who is a Daughter of a Nobleman, shall have *Paraphernalia*.

divided;

divided; and I cannot find any Judgment in it, but it was very well argued on both sides by the Bench. *Cro. Car.* 343. *pl.* 8. to 347. What the *Paraphernalia* are. *Mo. Case* 354.

The Wife surviving, shall have a Bond, enter'd into to her and her Husband.

Also the Husband Wife with him at

A Feme-Sole hath a Lease, and marries, it is at her Husband's Disposal.

Cro. El. 6.) and if he survives his Wife, he shall enjoy it against her Executors. But if he makes no Disposition of it, and his Wife survives him, it remains to the Wife. *Hob.* 3. *Co. Litt.* 46. b. *Vide postea* at the End of this Title.

Baron and Feme Joint-Tenants of a Term; the Baron leases it to commence at his Death, and good; but where Baron and Feme were Lessees for Lives, Remainder to the Survivor for Years, it is otherwise.

Years, the Baron grants over this Term, and dies; this Grant is void, because there was nothing in either of them to grant over, until there was a Survivor. *Poph.* 5.

Marriage is an absolute Gift of all Chattels personal in Possession.

Coverture *tempore levationis Querela*, cannot be assigned for Error.

murs; and adjudged for him, because she ought to have pleaded it in Abatement at first. *7 W. B. R.*

Feme-Sole leases at Will and marries, Lease continues.

Feme makes a Lease, and marries; the Payment of the Rent to her is void, though he had no Notice of the Marriage; but Payment to a Feme-Covert Executrix is good.

Feme Executrix not to prejudice her Husband, her Husband may release.

Husband, and in

A Bond is enter'd into to Husband and Wife; the Husband dies, and the Wife survives him; the Wife shall have the Bond, and not the Executors of the Husband. *Trin.* 34 *Car.* 2. *B. R. Dal.* 84. *pl.* 37. may sue the Bond in his own Name, or join his Election. *Dal.* 84. *pl.* 37.

A Feme-Sole hath a Lease for Years, and takes Husband; the Husband hath by the Marriage full Power to dispose of it; (Nay, where she was Executrix to her former Husband. *Cro. Jac.* 318. *pl.* 1.

Baron and Feme Joint-Tenants for eighty Years, the Baron by Indenture lets all the Land for seventy Years to commence immediately after his Death; the Baron died, and the Wife survived: It was held to be a good Lease, and did bind the Feme. *Cro. El.* 287. *pl.* 2. *Popham* 4, 5. But where the Baron and Feme were Joint-Lessees for their Lives, the Remainder to the Survivor of them for

The Marriage is an absolute Gift of all Chattels personal in Possession, whether the Husband survive the Wife or not. *Co. Litt.* 351. b. *Cro. Jac.* 318. *pl.* 1. *Cro. Car.* 345.

A Woman brings a Writ of Error, and assigns for Error, That *tempore levationis Querela* she was co-operta cum viro. The Defendant in the Error demurs; and adjudged for him, because she ought to have pleaded it in Abatement at first. *7 W. B. R.*

A Feme-Sole leases at Will and marries, the Lease continues still, and is not determined. *5 Rep.* 10. a.

A Feme makes a Lease, and takes Husband and marries, and receives the Rent of the Lessee; (he having no Notice of the Coverture) And resolved that this was no Payment, though allowed that Payment to a Feme-Covert Executrix was good. *Cro. Jac.* 617. *pl.* 7.

A Feme-Covert is Executrix, she can do nothing to the Prejudice of her Husband. *5 Rep.* 27. b. A Feme-Covert Executrix cannot sue without her Husband, and in all Cases as to all Matters of Record the Husband

band ought to be a Party, but not as to Matters of Fact. 16 H. 7. Fol. 6. a. But her Husband may release. • Ibid. But see the Case of *Mounson & Bourn*, Cro. Car. 519, 526. where a Feme-Covert was Executrix, and Judgment against her Husband and her, and upon a *Sciri Fieri*, Enquiry against Baron and Feme, and a *Devastavit* found, and a *Scire Feci* returned, and a Judgment thereupon: It was objected, That the Feme could have no Goods, and therefore the Judgment void: But adjudged good; for the Husband being charged in the Right of his Wife, Judgment shall be against both; and in this Case, if the Husband had survived the Wife, he shall be charged; and when she dies, her Husband shall be charged.

The Husband shall be charged for his Wife's *Devastavit*.

A Feme-Sole marries pending the Action against her, this doth not abate the Action.

She may be taken in Execution as a single Woman.

A Woman takes Husband after Verdict and before Judgment; Execution shall be against her in her maiden Name.

A Feme-Sole recovers, and marries before the Day in Bank, the Defendant can't plead this.

Baron and Feme recover in Debt: Feme dies; Baron may sue out *Sci. Fa.*

But where the Recovery is as Administratrix, the Husband hath nothing to do with it, but it shall go to the Administrator *de bonis non* of the Intestate.

Feme-Covert enters into a Bond as a Feme-Sole, it is void; and she may plead *Non est factum*.

An Action is brought against a single Woman, who pending the Action marries: This shall not abate the Action; but the Plaintiff shall, notwithstanding the Marriage, proceed to Judgment and Execution against her, and take her in Execution by the Name of a single Woman, according as the Action was commenced against her. *Trin. 12 W.B.R.*

An Action is brought against a Feme-Sole; pending the Action she marries D. Judgment was given against her, and a *Ca. Sa.* sued out thereupon, upon which she was taken: And resolved, that where a Woman is found guilty, and before Judgment takes an Husband, the *Ca. Sa.* shall be sued out against her and not against her Husband. *Cro. Jac. 323. pl. 1. Cro. Car. 232.*

A Feme-Sole brings an Action and recovers, and before the Day in Bank marries; the Defendant pleads this at the Day in Bank; *sed non allocatur*; for the Defendant hath no Day to plead it. *Cro. Car. 232. pl. 13.*

A Man and his Wife recovered in Debt in the Right of the Wife, the Wife being dead, the Husband may sue out a *Sciri Facias*, and have Execution: Because by the Judgment it became his own Debt, due in his own Right. 1 Mod. 179, 180. *Cro. Car. 208. pl. 1.* But where the Feme was Administratrix to her Husband, and then she and her now Husband recover, as her being Administratrix to her former Husband, and then she dies; her now Husband shall not sue out a *Sci. fa.* upon this Judgment, but the Duty remains to him who takes out new Administration in Right of the Intestate. *Cro. Car. 208. pl. 2.*

A Woman who was married enter'd into a Bond as a Feme-Sole, and she is afterwards sued as a Feme-Sole, and pleads *Non est factum*; she may give in Evidence upon *Non est factum*, her Coverture, at the Time of the sealing of the Bond; and that shall make the Bond void: For a Feme-Covert cannot do any Act to oblige her self. 5 W. & M. B. R.

Upon a Judgment against them upon *Non est factum*, it must be *quod capiantur*.

A Feme-Sole makes her Will, and gives her Lands to J. S. whom she afterwards marries, and then dies; the Will is void.

A Feme-Covert cannot submit to an Award.

How far another may do it for her.

the Feme, and be bound to the Performance of it; and such a Submission is a good Submission in Law, for it may be he may receive Benefit by the Submission; yet if he do not, it matters not.

The Husband nor his Estate liable to a Fine upon his Wife, but a *Capias pro Fine* must issue out against her.

The Feme in Consideration that the Father would give 10*l.* more for Portion, promis'd to re-pay it after Marriage, void.

unlawful, deceitful

The Husband shall not be punished for the Wife's Misfeasance.

An Action lies against Baron and Feme, for the Feme's not appearing to give Evidence.

cap. 9. 1 Leon. 112. Case 166. See Title Witnesses.

A Feme-Covert cannot take any Thing by a Gift from her Husband:

But the Husband may devise or settle to the Use of the Wife.

An Indenture said to be made between Baron and Feme, but not sealed by the Feme.

How it is where the Baron seals and delivers in the Name of the Feme.

When Judgment is against Baron and Feme, upon a Bond of the Feme, upon a Verdict against them upon *Non est factum*, the Judgment must be against them *quod capiantur*. Cro. El. 387. pl. 34. Cro. Jac. 440. See Title Judgments.

A Feme-Sole makes her Will, and devises her Lands to J. S. whom she afterwards marries, and dies in his Life-Time, the Will is void. 4 Rep. 60. b. 61. a. b.

A Feme-Covert cannot submit to an Award, for the Submission is a free Act: And the Will of a Feme-Covert is subject to the Will of her Husband, and so is not free. But another Person may submit to an Award for a Matter which concerns the Feme, and be bound to the Performance of it; and such a Submission is a good Submission in Law, for it may be he may receive Benefit by the Submission; yet if he do not, it matters not.

The Husband shall not be imprisoned for the Fine of his Wife, neither shall the Fine be levied upon the Goods of the Husband, but a *Capias pro Fine* shall issue out against the Wife: Because it is merely personal. Mich. 5 W. & M. B. R.

The Daughter promised her Father, that if he would give her a Portion of 80*l.* that she would in a Month's Time after Demand repay 10*l.* she married, and the Action was brought against her Husband and her for the 10*l.* and held to be an unlawful, deceitful Consideration, and void. Cro. El. 774. pl. 3.

Where an Husband shall be punished for the Misfeasance of his Wife, and where not. 9 Rep. from 70. b. to 71. b.

Where a Feme-Covert is subpenaed to give Evidence, and her Charges are tendered to her, if she neglects or refuses to appear, an Action lies against her Husband and her upon the Stat. of 5 Eliz. cap. 9. 1 Leon. 112. Case 166. See Title Witnesses.

A Feme-Covert cannot take any thing by a Deed of Gift from her Husband: But an Husband may settle an Estate to the use of his Wife, which is to take Effect after his Decease. Co. Lit. 3. a. But she may take by the Consent of her Husband. Cro. Car. 345.

An Indenture is said to be made between Baron and Feme, &c. when really the Indenture was never sealed by the Feme. How far this shall be an Estoppel, when recited in a Condition of a Bond to perform the Covenants, see Title Estoppel.

If the Baron had sealed and delivered it in the Name of the Feme, it had been good during the Life of the Baron. Cro. El. 769. pl. 12.

Baron and Feme.

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If Baron and Feme by Indenture bargain and sell the Land of the Feme rendring Rent, it had been a good Deed of the Feme; because she might have accepted the Rent, and affirmed Deed. *Cro. El. 769. pl. 12.*

Baron and Feme sell the Feme's Land, rendring Rent; this may be a good Deed, for she may accept the Rent, and affirm the Deed.

Baron and Feme, the Feme without her Husband (which she may do) sues in the Special Court for Defamations, and had a Sentence and Costs; the Husband releases the Costs, (which he may do if she lives with him) but can't bar the Suit, *quoad reformationem morum. Cro. Car. 222. pl. 9.* But when the Husband allows his Wife Alimony, he can't release the Costs, because they are out of the Alimony. *5 Mod. 71.*

A Feme may sue in the Spiritual Court without her Husband.

But he may release the Costs, but not the Suit.

Unless he allows his Wife Alimony.

A Man and Woman enter into Articles to each other, and the Man enters into a Bond to a third Person to perform the Articles, the Man and Woman afterwards marry, whereby the Articles became void. The Bond notwithstanding shall remain good, and the Husband may be sued upon it, and obliged to pay it, or so much as the *Quantum dampnificatus* in the Articles shall be; and the Lord Chief Justice resembled this to the Case of a Man's being bound to permit his Wife to make her Will: Although the Wife cannot make a Legal Will, yet the Husband shall be obliged to perform such Will as she makes. *Hill. 5 W. & M. B. R. See Cro. Car. 219. pl. 5. See Cro. Car. 376. pl. 2.*

A Man and Woman enter into Articles, the Man becomes bound to a Stranger to perform the Articles, they marry; the Bond remains good, and the Husband may be sued upon it.

A Man is bound to permit his Wife to make her Will; though she cannot make a Legal Will, yet he must perform such Will as she makes.

A Man and a Woman agree to marry, and they enter into a Deed in Writing (Note, not entred into to Trustees for the Feme) that the Feme should dispose of the Rents of her own Estate (which was 500 l. per Annum) during the Coverture; they marry; the Husband receives the Rents and dies; the Feme brings her Bill in Chancery against the Executors of her Husband to pay her the Money received by the Baron: But decreed that the Agreement made by the Baron before the Marriage was by the Marriage determined. *Chanc. Rep. 21, 117, 118.*

Marriage determines an Agreement made by Baron and Feme (without Trustees) before Marriage.

A Man enters into Bond to a Widow, whom he courted, with a Condition that if he should permit her to make a Will of her first Husband's Goods to the value of 50 l. to be paid within one Year of her Decease, that then, &c. The Defendant pleads that he permitted her to make her Will, but did not say that he paid the Money accordingly; otherwise he answers but one Part of the Condition, which is the making of the Will, not the Payment of the Money: For *To be paid* is all one with *And to pay*; and it is an idle thing to permit her to make a Will, if he doth not pay, &c. *Cro. Car. 597. pl. 18.*

Baron enters into a Bond with Condition to permit his Wife to make a Will to the Value of 50 l. to be paid within, &c. this *To be paid* must be construed *And to pay*, within, &c.

A Man

Baron and Feme.

A Man enters into a Bond to a Woman, to leave her 500 l. if he died before her.

A Man enters into a Bond to a Woman, with Condition, that if he married her, his Executors or Administrators should pay her 500 l. after his Death; he marries her, and dies. Here this Bond could not be sued during his Life, and therefore the Action upon it could not be suspended; but the Cause of Action grew only after the Death of the Husband, it being that his Heirs, Executors or Administrators, should pay the Wife 500 l. if she survived her Husband; which she did, and the Bond remains good to the Wife: And so it was adjudged *inter Acton & Gage, Mich. 11 W. Regis, per Turton & Gould*, against the Chief Justice. *Vide Cro. Jac. 572. And Mich. 7 Anne*, upon a Writ of Error in the Exchequer-Chamber, the Court inclined very much to affirm the Judgment, which the Plaintiff in the Errors perceiving, proceeded thereupon no farther. See *Chanc. Rep. 21, 117, 118.*

A Man promised to leave a Woman 500 l. at his Death if she would marry him.

This Action is not determined by the Marriage, but will lie against his Executors.

Baron makes a Feoffment of the Feme's Land; it is a Discontinuance, and how to be avoided.

32 D. 8. rap 28.

Where the Husband declares the Uses solely, it shall be good, unless the Wife dissent.

Fine by Baron and Feme, the Feme an Infant adjudged by Inspection, the whole Fine was reversed.

Feme-Covert levies a Fine, it shall bar till her Husband's Entry.

Rep. 43. a. But if the Husband enters and dies, the Conuzee shall not have the Land: Because by the Entry of the Husband the Conuzee's Estate was defeated, and the Wife's ancient Estate re-vested in her, and the Husband was seized of the whole Estate in the Right of his Wife. *7 Rep. 8. a. b.*

In Consideration that the Plaintiff would marry the Testator, he promised to leave her worth 500 l. And moved in Arrest of Judgment, that this personal Contract was determined by the Marriage: As if a Release had been made; or as where the Debtor takes the Debtee to Wife, the Debt is determined. *Curia.* It never was a Duty in the Life of the Testator, and therefore could not be released by him. *Cro. Jac. 571. pl. 11. 623, 222. Hob. 216.*

The Husband makes a Feoffment of the Wife's Land; it is a Discontinuance to the Wife; for the purging whereof she was put to her *Cui in Vita*, but could not avoid it by Entry, as she now may by the Stat. of 22 H. 8. cap. 28. *Townsend's Case. 1 Plow. 1116. b.*

Baron and Feme levy a Fine of the Wife's Land, the Husband only declares the Uses; it shall bind the Feme, if her Dissent doth not appear. *2 Rep. 57. a.*

Baron and Feme, the Feme within Age, levy a Fine; and upon Inspection the Wife was adjudg'd to be within Age: It was adjudg'd that *Finis predicta*, both as to Baron and Feme, *revocetur.* *1 Leon. 116. Case 158.*

A Wife levies a Fine, as a Feme-Sole, of Land whereof she was seized; this shall bar her and her Heirs, if the Husband doth not enter. *Coke 10.*

Husband

Baron and Feme.

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Husband and Wife Tenants in Special Tail, the Husband levies a Fine and dies; the Estate Tail is barr'd, and not dissolved or determined, but hath Continuance so long as the Wife lives, or the Heirs in Tail remain. 9 Rep. 138. b. to 141. a.

The Husband Tenant in Special Tail levies a Fine, how long it bars the Entail.

But although the Wife hath an Estate Tail, yet she cannot levy a Fine, or suffer a Recovery: Because she cannot bar that which was barr'd before by the Priority of the Act of the Husband. 9 Rep. 142. b.

Where the Fine of the Wife Tenant in Tail will not bar.

If the Son of a Tenant in Tail levies a Fine in his Father's Life-Time, this after the Father's Death shall bar the Entail. 9 Rep. 141. a.

The Fine of the Son Tenant in Tail, in his Father's Life-time, bars after the Father's Death.

On a Lease of the Wife's Land, which may be made for three Lives, or 21 Years, or under, paying the ancient Rent, or more, she must be a Party and seal the Indenture, and the Rent must be reserved to Husband and Wife, and the Heirs of the Wife; and the Husband not to alien, discharge, or grant away the Rent, but during the Coverture only. 32 H. 8. cap. 28. See Co. Litt. 44. 45.

Lease of the Wife's Land, how to be.

32 H. 8. cap. 28.

A Lease for Years by Baron and Feme of the Feme's Land without Deed is void against the Feme. Cro. El. 656. pl. 20.

Lease By Baron and Feme without Deed is void as to the Feme.

When Baron and Feme levy a Fine of the Wife's Land, and the Baron declares by one Deed the Uses, and the Wife by another; or else, that neither of them declares any Uses which are sufficient in Law, there the Law doth immediately revest the Uses in the Feme solely. 2 Rep. 57, 58.

Where Husband and Wife levy a Fine of the Wife's Land, and neither of them declares the Uses.

Baron and Feme Lessors in Ejectment, and do not say by Deed, and yet good: Because there are many Precedents in the Case. 2 Rep. 61. b. 3 Rep. 21. b.

Baron and Feme Lessors in Ejectment, and say not by Deed.

The Defendant avows that his Wife's Ancestor was seized in Fee, and let the Lands for Years rendering Rent, and for Rent due to him and his Feme *jure Uxoris* he avows: After Verdict moved that the Baron ought to have joined his Feme with him, the Rent being due to him and his Feme; but he having shewed the whole Matter and averr'd the Life of his Wife, it is good. Cro. Jac. 442. pl. 17, 443.

The Husband avowed in his own Name for Rent due *jure Uxoris*, and good.

The Husband only, and not his Wife, shall be imprisoned for want of Bail to an Action brought for the Debt of the Wife *dum sola*: Because the Wife cannot find Bail for her self, but the Husband must find Bail for her and himself, or be imprisoned; and before he is discharged, the Court will make him find Bail for himself and Wife. 1 Lev. 216.

The Husband only shall be imprisoned for want of Bail for his Wife's Debt.

Feme-Sole makes a Warrant of Attorney, and marries.

Office of the Court.

The Wife cannot make an Attorney, but the Husband must for her.

Where Judgment against Husband and Wife, and the Wife taken in Execution, a *Superfedeas* granted for her.

in Execution; but upon a Motion the Judgment was vacated, and a *Superfedeas* granted to the Execution against the Wife.

The Wife taken up on an Outlawry, shall be discharged.

she cannot do. See *Litt. Rep.* 18.

Alia enormia eis in a Declaration, good after a Verdict.

cause the *Alia Enormia* was but Form, and only in Aggravation of Damages, and not the Substance of the Declaration, and after a Verdict, held good. *Cro. Jac.* 664. See 655. pl. 4.

Ad Dampnum ipsorum, where good.

So they may have for the Word Bawd, &c.

The Husband keeps the House.

not the Wife that keeps the House, and therefore the speaking to the Wife can be no Damage to the Husband. See Title Slander.

He only to bring the Action.

The Wife is only damaged, and ought to join in the Action.

band for Conformity only ought to join in the Action. *March Rep.* 212.

Where it is *clausum fregit* of the Wife, it is good.

Leon. 105. Case 140. The *herbam inde provenien.* makes the Declaration good. *Cro. El.* 96. pl. 10. but *Litt. Rep.* 285. A Man seized *jure Uxoris*, brings

A Woman gives a Warrant of Attorney, and then marries; you may file a Bill, and enter Judgment against both Husband and Wife, by the Practice of the Court. *Show. Rep.* 91.

Where Baron and Feme are sued, the Feme cannot make an Attorney: But the Husband must make an Attorney for himself and Wife. 2 *Saund.*

The Husband is a Prisoner in the King's Bench, a Declaration is filed against him and his Wife, and Judgment is thereupon obtained against them by Default, and a Writ of Enquiry and Judgment, and Execution thereupon, and the Woman taken

Baron and Feme are outlawed, and the Wife taken thereupon; she shall be set at Liberty, and the Husband shall be compelled to appear for his Wife; because he may bring a *Superfedeas*, which

In Trespass and Assault by Baron and Feme for a Battery of the Feme, *Et quod Def. alia enormia eis intulit*; and tho' objected, That the Wife cannot join for a Wrong done to the Baron; yet be-

cause the *Alia Enormia* was but Form, and only in Aggravation of Damages, and not the Substance of the Declaration, and after a Verdict, held good. *Cro. Jac.* 664. See 655. pl. 4.

So in Trespass and Assault they may say, *Ad Dampnum ipsorum*, tho' a Feme-Covert can have no Damages, for this Action will survive. 1 *Sid.* 387. See *Litt. Rep.* 285.

Words of a Wife were that she is a Bawd and keeps a Bawdy House; upon these Words an Action was brought by Baron and Feme *ad dampnum ipsorum*, and moved first that it is the Husband and not the Wife that keeps the House, and therefore the speaking to the Wife can be no Damage to the Husband. See Title Slander.

2. Admit they are accountable, the Husband only ought to bring the Action, because the speaking of the Words is only to his Damage.

Chief Justice. The Wife only is to be indicted for the keeping of a Bawdy House, and therefore she is only damaged by the Words, and the Husband for Conformity only ought to join in the Action. *March Rep.* 212.

Baron and Feme bring Trespass for *clausum fregit & herbam inde provenien. messuit ad dampnum* Baron and Feme; and held good, because the *clausum fregit & herbam messuit* makes it good. 1

Leon. 105. Case 140. The *herbam inde provenien.* makes the Declaration good. *Cro. El.* 96. pl. 10. but *Litt. Rep.* 285. A Man seized *jure Uxoris*, brings

brings Trespass for a Trespass made upon the Land; the Wife shall not be joined.

Trover was brought by Baron and Feme, and it is laid *ad Dampnum ipsorum*; this is naught: Because Husband and Wife cannot be Joint-Tenants of Goods, but the Husband solely is possess'd, the Law transferring in Point of Ownership the whole Interest in the Husband, and he must bring the Action. 4 Jac. 2. B. R. Yelv. 165, 166. Henley 2. Cro. Jac. 661. pl. iv.

Trover by Baron and Feme *ad Dampnum ipsorum*, is naught.

Also Trover was brought against Husband and Wife, and a Possession and Conversion laid in them both, and held to be good: Because this Action is not grounded upon any Property supposed to be in the Defendants, but in the Possession only; and the Point of the Action is in the Conversion, which is a Tort wherewith a Feme-Covert may be charged. Yelv. 165; 166. For she may be a Trespasser, and convert Goods to the Use of her Husband, or to the Use of a Stranger, although she cannot convert to her own Use, in 13 Car. B. R. and Noy 126. and 79. But see Cro. Car. 254. contra. Cro. Jac. 661. Jones 16, 444. see *postea*, *hoc titulo*.

The Wife shall be charged where the Conversion is alledged in her, because it is a Tort.

She may be a Trespasser, and convert to the Use of her Husband, or a Stranger.

Trover against Baron and Feme, supposing the Trover by both during the Coverture, and the Conversion by the Feme: They both plead Not guilty, whereas it should be only that the Feme is Not guilty; this is naught and a Repleader ordered. Cro. El. 883. pl. 13. See Cro. Jac. 5. pl. 6. accord.

Trover against Baron and Feme for the Conversion of the Feme; they plead Not guilty; where it should be only that the Feme is Not guilty.

Trover against Baron and Feme, supposing the Conversion to be to their proper Use; and for this Cause reversed, because it is the Conversion of the Baron only, for they are only to his Use; and tho' they may be charged with a joint Battery or Imprisonment, it can't be so for Goods converted. Cro. Jac. 661. pl. iii.

Trover against Baron and Feme and Conversion *ad usum eorum*, is naught.

But they may be charged with a joint Battery. But not for Goods converted.

Battery; the Baron justifies in Aid of his Wife; the Feme justifies by her self, *de son assault*, the Plaintiff replies *de son tort*, and both Issues found for the Plaintiff, and entire Damages: And after a Verdict a Repleader awarded, because the Feme cannot plead by her self; and the Damages being entirely assessed, all was ill. Cro. Jac. 239. pl. 3.

In Battery the Baron pleads by himself, and the Feme by her self, and entire Damages; it is ill.

A Repleader.

How Judgment shall be against Baron and Feme where both are found guilty, and how where only the Feme is found guilty. See Title Judgments. and see Cro. Car. 406. pl. 5. 407.

How Judgment shall be when Baron and Feme are found guilty, and where the Feme only is found guilty.

Baron and Feme bring an Action in the Nature of a Conspiracy for falsely indicting of them *ad dampnum ipsorum*: And moved that the Wife can't join with her Husband for Damages, for it is a several Damage to either of them; and of that Opin-

Baron and Feme were indicted and are acquitted, and join in an Action *ad dampnum ipsorum*. One Judge held it good, another not.

nion

nion was *Berkley: Croke, contra*; because it's grounded upon an entire Record, by which they were both prejudiced, where they may join if they will, or the Husband only may have the Action for it. *Cro. Car. 553. pl. 8.*

Baron and Feme bring Battery for beating of himself and Wife, it's naught, and why.

How Baron and Feme to plead for a Trespass of the Feme.

only pleads here, and not the Wife; for it should be *dicunt*, That she is not guilty. *Hetley 10. See Cro. Car. 594. pl. 9.*

Trover before Marriage, Conversion after, is good, brought by Husband and Wife.

though the Conversion is the Perfection of the Cause. *2 Lev. 107. Trover against Baron and Feme held good. Latch 126.*

The Wife cannot sue out an Execution in her and her Husband's Name when dead.

Feme-Sole recovers a Judgment, marties and dies: The Husband sues out a *Scire Facias*, and hath Judgment, good.

be of Opinion, that he well might: For that by this awarding of Execution the Husband shall have the Debt by Survivorship; and that if the Husband should die before Execution, the Administrator of his Wife should have it. *Goodyear's Case. 9 W. B. R.*

The Benefit of a Decree by Baron and Feme belongs to the Feme, and not the Baron's Executors.

Where the Wife was admitted to sue without her Husband.

Where the Wife's Receipt of Money shall bind her Husband.

The Husband charged with his Wife's Debts, after her Death.

make him pay for them. *Chanc. Rep. 295.*

Baron and Feme bring Battery for beating of himself and his Wife; the Writ shall abate, because the Wife can't join for the Battery of her Husband, and the Husband cannot have Judgment alone, because his Wife is joined with him in the Writ. *Co. Inst. 326.*

Trespass and Assault against Baron and Feme, for the Assault of the Feme, the Baron and Feme defend the Force, &c. And the Baron says, That his Wife is Not guilty; this is naught: For the Husband

Trover before Marriage, and Conversion after Marriage was brought by Husband and Wife, and good with or without the Wife: For the Trover gives the Inception of the Action to the Wife, although the Conversion is the Perfection of the Cause. *2 Lev. 107.*

Baron and Feme recover Judgment, then the Husband dies, and the Wife sues out an Execution in her and her Husband's Name: And upon a Motion it was quash'd. *6 W. & M.*

A Feme-Sole recovers Debt and takes Husband, and Execution is upon a *Sci. Facias*, upon that Judgment adjudged to the Husband and Wife; then the Wife dies, and the Husband sues out a *Scire Facias* in his own Name; and the Court seemed to

Baron and Feme have a Decree for Money in the Right of the Feme, and the Baron dies; the Benefit of this Decree shall go to the Wife, and not to the Executors of the Baron. *Chanc. Rep. 27.*

A Wife was admitted to sue in Chancery without her Husband touching a separate Maintenance agreed to by her Husband. *Chanc. Rep. 35.*

The Wife received Money due on a Bond to her Husband, she usually received and paid Money, it shall bind her Husband. *Chanc. Rep. 38.*

A Feme-Sole buys Goods, and marries and dies, the Goods came to the Husband's Hands after her Death, but the Debt remained unpaid: Equity will

Baron and Feme

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A writ is brought against Baron and Feme, although she never was his Wife, yet he must file Bail for himself and her. But it shall not be any Estoppel to him to plead that she is not his Wife.

Coverture may be given in Evidence upon the general Issue: Because whatsoever a Feme Covert doth, is absolutely void.

Upon not guilty in Trespass for an Assault and Battery by Husband and Wife, the Husband is found Guilty, and the Wife not guilty, and held to be well. *Show. Rep. 350.*

Baron and Feme cannot take by Moieties. *Nichols & Nichols's Case, 2 Plow. 483. e.*

A Woman takes Husband, living her first Husband; this is a void Marriage. *Cro. El. 857, 158.*

One of fourteen marries a Wife of ten, the Husband, when the Wife comes to twelve, may disagree as well as the Feme: Because in all Contracts of Matrimony, each ought to be bound, and equal Election given to both. *Co. Litt. 79.*

The Age for a Male to marry is fourteen, and for a Female twelve. *Co. Litt. 24. b.*

Baron and Feme are divorced *causa Adulterii*, yet they continue Man and Wife; for it is not a *Vinculo Matrimonii*, but only a *Mensa & Thoro*, and she shall have her Dower. *Co. Litt. 33. b.* See Title Marriage.

An Idiot a *Nativitate* marries; it is a good Marriage, and his Children shall inherit. *1 Sid. 112.*

A Marriage out of a Church is good. *Note.* Before the Time of Pope Innocent III. there was no Solemnization of Marriage in Churches; but the Man came to the House where the Woman inhabited, and led her home to his own House, which was all the Ceremony then used. *Moor 170.*

If an Husband makes a Lease for Years in Trust for his Wife, this is voluntary; and if he sells it, it binds the Wife; but where a Trust is created for a Wife *bona fide*, the Husband cannot sell it, unless where she is examined as in a Fine. *Chanc. Rep.*

A Feme hath a Term, and takes Husband, he may give and dispose thereof in his Life-time, but he cannot dispose of it by Will. *Cro. Car. 344.*

A Feme, though not bound by her Agreement during Coverture, yet acting according to the Agreement, when a Widow, is bound by it. *Chanc. Rep. 255.*

Between Baron and Feme several Moieties may be as well of an Estate Tail, as of an Estate in Fee Simple. *Mo. Case 228.*

A Writ is brought against Baron and Feme when she is not his Wife, yet he must file Bail for her.

Coverture may be given in Evidence upon the general Issue.

Trespass and Assault against Baron and Feme, and only Baron found guilty.

Cannot take by Moieties.

A Woman marries another, living her first Husband, it is void.

How it is in Case of Marriage before Years of Consent.

When a Male may marry, and when a Female.

A Divorce a Mensa & Thoro doth not dissolve a Marriage.

An Idiot may marry.

How long Marriages have been in Churches, and how it was before.

Where the Husband may dispose of a Trust settled upon his Wife, and where not.

307, 308.

The Husband may dispose of a Term of his Wife's in his Life-time, but not by his Will.

A Feme Covert not bound by her Agreement; yet when a Widow acting according to it, is bound by it.

Several Moieties may be of an Estate Tail between Baron and Feme.

The Wife shall be bound by her Husband's Breach of a Condition.

The Husband cannot devise a Term granted to himself and Wife.

The Husband cannot grant a Term from his Wife, where she hath but a Possibility, and no Interest.

The Husband cannot charge his Wife's Term with a Rent.

A Feme before Marriage grants a Term to her own Use, yet the Husband shall have the Money.

where the Husband before Marriage, being a Party to the Deed, had consented to it, that it should be for her own separate Use.

The Husband cannot charge the Term of his Wife settled by her on Trustees before Marriage.

Neither shall Outlawry or Felony hurt.

But if made by the Husband after Marriage, shall be fraudulent.

Baron shall have Administration to his Wife.

Statute of Distributions not to extend to Feme-Coverts Estates.

29 Car. 2. cap. 3.

Where the Feme is examined by Writ, she shall be barr'd.

Not by Deed inrolled.

May have a *Quare Impedit* alone.

Where the Baron shall have the Action without the Feme.

nor jointly with her Husband, but the Husband only shall have it; there he alone, without his Wife, shall bring the Action. 1 Rol. Rep.

If Lands are given to a Feme Sole upon Condition, and she takes Husband who breaks the Condition, the Feme shall be bound thereby. *Mo. Case* 229.

If a Lease be made to Baron and Feme for Years, the Baron cannot devise the Term, for the Feme is in by Survivorship, before the Devise takes Effect. *Co. Litt.* 351. a.

Where a Lease is made to Baron and Feme for their Lives, Remainder for a Term to the Executors or Administrators of the Survivor, the Baron cannot grant the Term; but if he dies before her, it will survive: Because the Feme had only a Possibility, and no Interest. *Co. Litt.* 46. b.

The Husband grants a Rent out of a Term of his Wife, and dies; she shall hold it discharged: Because she comes paramount the Charge. *Co. Litt.* 351. a. 284. b. 7 H. 6. 1.

A Feme before Marriage grants over a Term to her own Use, the Husband shall have the Money, which by his Wife in her Life-time was actually received upon this Trust, for by the Receipt the Husband had a Property. *March* 44, 45. *Aliter*

where the Husband before Marriage, being a Party to the Deed, had consented to it, that it should be for her own separate Use.

The Wife assigned her Term before Marriage in Trust for herself, the Husband without the Trustees mortgages; this is void: Neither can the Husband forfeit it by Outlawry or Felony. But if it had been an Assignment made by the Husband after Marriage in Trust for his Wife; this is a voluntary Settlement, and fraudulent against Purchasers. *Chanc. Rep.* 225.

Administration of the Wife's Estate ought to be granted to the Baron. 1 Rol. Abr. 910. pl. 1. Note, The Statute of Distributions shall not extend to the Estates of Feme Coverts. 29 Car. 2. cap. 3.

Where the Feme is examined by Writ, she shall be barr'd, else not. *Co.* 10. Rep. 43.

Baron and Feme acknowledge a Deed to be inrolled, this doth not bind the Feme: Because she is not examined by Writ. 10 Co. 43. 2 Inst. 673.

The Husband shall have a *Quare Impedit* alone. 38 H. 6. 3. b. Owen 82. Litt. Rep. 13.

In all Cases where the Feme shall not have the Thing when it is recovered, (as in Trespass upon his Wife's Land. *Bulst.* 21.) neither alone to herself,

nor jointly with her Husband, but the Husband only shall have it; there he alone, without his Wife, shall bring the Action. 1 Rol. Rep.

360. But for a Battery done to the Wife, they must join. *Yelv.* 89. and the Judgment must be, that Baron and Feme do recover, though the Husband only is to have the Damages. *Godb.* 396. *Jenk. Rep.* 28.

And where they must join.

Trespas by the Plaintiff for assaulting and beating of him, *necnon* for assaulting and beating of his Wife, *per quod consortium uxoris sue* for three Days *amissit*: (in truth the Wife went and lived with him)

Baron brings Battery for himself and Feme in one Action, and good, *per quod consortium amisit*.

And moved, the Baron ought to join the Battery of the Feme with the Battery to himself, and ought not to have an Action for the Battery of his Wife, without joining of her with him. *Curia contra*, For the Action is not brought for the particular Harm done to the Feme; but for the Baron's particular Loss for the losing of his Wife's Company. *Cro. Jac.* 501. *pl.* 11. 502. 538. *pl.* 6. *Cro. Car.* 9. *pl.* 12.

If a Bond be made to a Feme Covert, during Coverture, for Payment of Money to the Feme, the Baron alone may bring the Action upon this Bond. 3 *Lev.* 403.

The Husband must bring the Action upon a Bond enter'd into to his Wife.

They must join in an Avowry for Rent in Right of the Feme. 1 *Rol. Abr.* 318. *pl.* 1, 2. *Litt. Rep.* 375.

Both must join in an Avowry for Rent.

Whatever the Consideration is, if there be an expresse Promise made to the Wife, they may join. *Cro. Eliz.* 61.

Where they may join.

An Action was brought by Baron and Feme upon a Promise made to the Feme after Marriage: In Consideration that she would cure a Wound of the Defendant, he promised to pay her 10*l.* they aver the Cure; and it was insisted, that it being a personal Duty, the Baron only should bring the Action. *Curia*. The Action is well brought, and would survive to the Wife. *Cro. Jac.* 77. *pl.* 7. 205. *pl.* 10.

Baron and Feme may bring an Action upon a Promise made to the Feme.

Baron and Feme bring an Action for Money of the Plaintiff, received by the Hands of his Wife, *ad dampnum eorum*, and naught; for a Feme Covert cannot have Goods with her Husband. *Cro. Jac.* 644. *pl.* 6.

They cannot bring an Action for the Baron's Money, *ad dampnum ipsorum*.

In an Action upon a *Devastavit* against Baron Executrix, it must not be laid *quod Devastaverunt*, for a Covert cannot waste. 2 *Lev.* 145.

A Feme cannot waste.

If a Lease be made to Baron and Feme rendering Rent, the Feme may, after the Death of the Baron, disagree to it. 2 *H.* 4, 19. *b.* *Br. Baron and Feme.* 29.

Where the Feme may disagree to a Lease.

Where a Feme makes a Contract to the Use of her Husband, and it comes to his Use, it shall bind him. 20 *H.* 6. 22.

Where the Feme's Contract binds her Husband.

So where she buys Things for her necessary Apparel without her Husband's Consent, it shall bind him. 1 *Sid.* 120. So of necessary Diet, Lodging, &c. *Aleyn* 61.

Where it is for Necessaries.

And where not.

A Woman departs from her Husband without his Consent, and the Husband prohibits several Persons from trusting of her; afterwards she desires to cohabit with her Husband, which he refuses; afterwards one who had Notice trusted her with Necessaries, the Husband shall not be charged. *Manby & Scott. 1 Sid. 109, 110. 1 Mod. 9.*

No Action lies against Baron after his Wife's Death:

Nor liable, after his Wife's Death, to a Judgment recovered against her *dum sola.*

If a Feme be indebted to another before Marriage, and before the Debt is recovered, dies; the Husband shall not be chargeable. *20 H. 6. 22. b. See Cro. Jac. 257. pl. 16.*

If there be a Judgment in Debt against a Feme Sole, who marries and dies, the Baron shall not be charged therewith. *3 Mod. 186.*

But where there is a Judgment against a Feme Sole who marries, and the Judgment is had upon *Scire Facias* against Baron and Feme, and then the Feme dies, a *Scire Facias* will lie against the Baron, to shew Cause why Execution should not go against him upon the first Judgment, for upon the Award of the Execution it became his Debt. *3 Mod. 186, &c.*

Trespass by Baron and Feme for breaking of the Plaintiff's Close, and beating of his Wife, *ad dampnum ipsorum.*

How Baron and Feme must plead a Divorce.

Trespass by Baron and Feme *de clauso fracto* of the Baron, and for the Battery of the Feme *ad dampnum ipsorum*; the Declaration is naught. *Cro. Jac. 655. pl. 5.*

Debt against Baron and Feme as Executrix to her former Husband, and the said J. & M. not saying *uxor ejus*, plead that they were divorc'd before the Writ purchased, and held to be a good Plea. *Cro. El. 352. pl. 6.*

Barretry, See Common Barretoy.

Bastard and Bastardy.

See Marriage.
See Poor.

Bastard, what.

Bastard is one born of any Woman not married, so that his Father is not known by the Order of the Law, and therefore he is called *Filius Populi*.

Mulier, what.

By the Law of the Romish Church, if a Man get a Woman with Child, which Child is born, and afterwards he marries her, such Child shall be said to be Mulier, and not Bastard.

Bastard and Bastardy.

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It is Murder for a Mother to conceal the Death of her Bastard-Child per Stat. 24 Jac. 1. c. 27.

Murder to conceal the Death of a Bastard-Child. 21 Jac. 1. cap. 27.

Two Justices, (one of the Quorum) near the Parish-Church in which a Bastard is born, may upon their Examination as well take Order for the Punishment of the reputed Father and Mother, as also for the better Relief of the Parish, and may charge the Mother or reputed Father with the Payment of Money weekly for the Relief of such Child; and if the reputed Father or Mother shall upon Notice of such Order in Writing refuse to pay the same, then such Person refusing shall be committed to the common Gaol until he shall find Sureties to perform the Order, or else to appear at the next General Sessions of the Peace, and obey such Order as shall be made there, or else to abide the first Order made by the two Justices. 18 El. cap. 3.

What is to be done in the Case of a Bastard-Child.

18 Eliz. cap. 3.

By the Statute of 14 Car. 2. cap. 12. the Churchwardens and Overseers of the Poor, where a Bastard shall be born, may seize so much of the Rents of the Lands of the reputed Father and lewd Mother as shall be ordered by two Justices, to be confirmed at the Sessions, and this to be for the Discharge of the Parish. 14 Car. 2. cap. 12.

Where the Rents of the Father and Mother may be seized, and by whom, for keeping of the Bastard.

14 Car. 2. cap. 12.

The Question of Bastardy or Legitimation ought to be first moved in the Temporal Courts, and Issue ought to be thereupon joined, and then to be transmitted to the Ecclesiastical Court by the King's Writ, to be examined and tried there; and thereupon the Bishop shall make his Certificate to the King's Court, which being duly made, the Law gives entire Credit to it. Dav. Rep. 52. a.

How and where Bastardy is to be tried.

When Issue is joined upon Bastardy, before it shall be awarded to the Ordinary to be tried, Proclamation shall be made thereof in the same Court; and afterwards the Issue shall be certified into Chancery, where Proclamation shall be made once a Month for three Months; and afterwards the Chancellor shall certify this to the Court where the Plea is depending; and after it shall be proclaimed again in the same Court, "That all those whom this Plea doth concern, should go to the Ordinary to make their Allegations. 9 H. 6. cap. 11.

The Manner of the Trial.

Certificate into Chancery, and three Proclamations.

Where the Trial shall be, where Bastardy shall be pleaded to be beyond Sea.

The Words of the Proclamation.

9 H. 6. cap. 11.

How the Trial to be, where pleaded, to be beyond Sea.

25 E. 3. Stat. 2.

It may be tried by the Bishop's Certificate, as well in any personal Action as in any real Action, or Writ of Affize. Dav. 732. See 3 Leon. Case 26.

In what Actions it may be tried.

If a Man be certified to be a Bastard, this shall not bind before Judgment in an Action between him and the other. 18 E. 3. 34. Neither doth it bind if the Plaintiff be after nonsuited. Ibid.

Certificate of Bastardy binds not till Judgment:

Nor when the Plaintiff is nonsuited.

What is a *Mulier*.

Bastard by the Common Law, and *Mulier* by the Civil Law.

A Limitation to a *Bastard* is good, but naught to a *Bastard* before born.

A Remainder to the eldest Issue of a Feme, is good, though he were a *Bastard*.

he were a *Bastard*.

Bastard is a good Name of Purchase.

Where an Use may arise to a *Bastard*, and where not.

A married Man takes another Wife, the Issue by her are *Bastards*.

The Issue are bound by a Sentence of Divorce.

Common Law be admitted to make any Proof to the contrary. 8 Co. Rep. 43. Jenk. Rep. 289. Cro. Jac. 462.

What Divorces bastardize the Issue, and what not.

Divorce to bastardize the Issue, must be in the Life of Baron and Feme.

Issue forty Weeks and eight Days after Husband's Death, and legitimate.

Of the Writ de *Ventre inspiciendo*.

Bastard and Bastardy.

If a Woman be with Child by A. who afterwards marries her, and then a Child is born: This is a *Mulier*, and not a *Bastard*.

If A. hath Issue by B. and afterwards they marry; the Issue is a *Bastard* by our Law, but a *Mulier* by the Civil Law. 47 Ed. 3. 14. b. 5 Co. Rep. 416, 417. See 2 Inst. 96, 97.

A Limitation of an Estate to a *Bastard in esse* is good, because he is a Person known; but it cannot be so to a *Bastard* before he is born, for the Law will not give Liberty to provide for such before they be born; and where a Remainder is limited to the eldest Issue of a Feme, he shall take, tho'

Cro. Eliz. 509. pl. 34. 510. Nov. 35. *Bastard* is a good Name of Purchase. Moor, Case 602.

A Man cannot by Covenant to stand seised, raise an Use to a *Bastard*, but he may by Limitation of Use upon a Feoffment. Nov. 35.

A Man who hath a Wife, marries another, and hath Issue by her: This Issue is a *Bastard*, for the second Marriage is void. Co. 7 Rep. 44.

Where a Sentence of Divorce is given in the Spiritual Court, the Issue shall be perpetually bound so long as it stands in Force, and they shall not at Common Law be admitted to make any Proof to the contrary. 8 Co.

Rep. 43. Jenk. Rep. 289. Cro. Jac. 462. A Divorce *Causa præcontractus*, *Causa Consanguinitatis*, *Causa Frigiditatis*, bastardizes the Issue. 47 E. 3. pl. 78. Co. Litt. 235. a. But a Divorce *Causa Adulterii* doth not: That is not à *Vinculo Matrimonii*, but only à *Mensa & Thoro*. 1 Rol. Abr. 341. pl. 20.

If Baron and Feme continue Baron and Feme all their Lives, the Issue cannot be a *Bastard* after their Death. 7 Co. Rep. 44. Jenk. Rep. 268.

A Woman hath Issue forty Weeks and eight Days after her Husband's Death, the Issue shall be legitimate; for it may be so by Nature, and the Law hath not appointed any certain Time for the Birth of legitimate Issues. Mich. 17 Jac. B. R. See Cro. Jac. 541.

For the Writ de *Ventre inspiciendo*, and Proceedings therein. See Reg. 227. a. Co. Litt. 8. b. Cro. El. 566. Cro. Jac. 686. Winch 71.

Battery.

De Ion Tort.
Justification.
See Master and Servant.
Trespas.

Battery is a Trespas committed by one Man upon another, Vi & Armis, & contra Pacem, &c.

The lifting up of the Hand in Anger against a Man in an Assault in Law.

To lay Hands gently upon another (not in Anger or Passion) is no Battery to ground an Action of Trespas and Assault upon; for the Law will not presume the Party is thereby damnified.

Battery brought by Husband and Wife for beating of the Wife, and taking of the Husband's Goods, is naught: Because it ought to have been by the Husband only for the Goods. 1 Lev. 3.

In Battery the Defendant justifies *molliter manus imposuit*, to arrest the Plaintiff, whether good or not. 3 Lev. 404.

The Father cannot bring an Action of Trespas for the beating of his Son, but the Son only shall have the Action. Cro. Eliz. 55. pl. 1. and Fol. 770.

The Master may bring Trespas for beating of his Servant, *per quod servitium amisit*.

What is an Assault in Law.

What is a Battery, and what not.

Baron and Feme bring Battery for beating of the Wife, and taking of the Husband's Goods, is naught.

Justification for *molliter manus imposuit*, to arrest the Plaintiff, whether good or no.

The Father cannot bring an Action of Trespas for beating of the Son.

The Master may have it for beating of his Servant,

Bill of Exceptions.

What it is, and how
to be sued out.

13 E. 1. rap. 31.

Where a Suit is in any Court, if the Plaintiff or Defendant alledge an Exception to the Judges Opinion, praying them to allow it, which if they do not, then if he who makes the Exception writes it, and requires the Judges to seal it, which if any of them doth, then upon producing in Court of the Bill sealed, the Justice who sealed it shall be commanded to appear at a certain Day to confess or deny his Seal; and if the Justice cannot deny his Seal, then to proceed to Judgment according to the Exception. See 2 Inst. 426, 427.

Bills of Exceptions extend only to Civil, not to Criminal Causes.

They extend only by the Statute of W. 2 c: 31. to Civil, not to Criminal Causes. *Kelynge Rep.* 15.

When the Exceptions
to be taken.

The Exceptions ought to be in Writing *sedente Curia*, in the Presence of the Judge, and signed by the Counsel on each side.

How to proceed upon
it.

Afterwards the Bill must be drawn up, and tender'd to the Judge who tried the Cause, to be by him sealed; which if he refuses to do, then upon a Petition to the Lord Chancellor, he will grant a Writ: Which see in the Register, *Fol.* 182. *a. b.* for that purpose.

A *Scire Facias* to the
Judge *ad Cognoscendum*
Scriptum.

When the Bill is signed, there goes out a *Scire Facias* to the Judge, who signed it *ad Cognoscendum Scriptum*, which when done, it is made Part of the Record; and is returned as Part of the Record upon the Writ of Error to be brought for that Purpose.

Must be certified as
Part of the Record.

And entred upon the
Issue-Roll.

Note, the *Scire Facias* to the Judge, and his Return with the Bill must be entred upon the Issue-Roll.

Bill of Exchange.

There is a Difference between an Inland Bill of Exchange and an Outland Bill of Exchange, which is made to return Money beyond the Seas: For an Inland Bill is but in Nature of a Letter, but an Outland Bill is of another Nature, and more regarded in the Eye of the Law: *July 1650. B. S.* Because it is more for the Advance of the Trade of the Nation with other Countries; and is therefore of more publick Concernment.

Difference between an Inland and Outland Bill of Exchange.

If an Outland Bill be refused to be accepted, an Action will lie upon this Matter against the Drawer. *28 Car. 2. Dunstar and Price.*

Action lies against the Drawer, if Outland Bill be refused to be accepted.

How a Declaration shall be laid upon a Bill of Exchange. *5 Mod. 367.*

How to declare upon a Bill of Exchange.

A Bill of Exchange is made to A. who indorses it to B. who indorses it to C. and it is protested for Non-payment; B. may, notwithstanding his Indorsement, bring an Action upon this Bill. *Show. Rep. 163.*

Where an Indorsee may bring an Action upon a Bill, after he hath indorsed it to another.

In what Case a Protest may be made upon a Copy of a Bill of Exchange. *Ibid.*

Protest made upon a Copy of a Bill.

The Drawer of a Bill of Exchange is liable, although the Bill is not presented in Time. *Show. Rep. 319.*

The Drawer liable, though not presented in Time.

Assumpsit upon a Bill of Exchange, payable to the Bearer; the Custom laid too general, and naught. *3 Lev. 299.*

To pay a Bill of Exchange to the Bearer, is too general.

By the Statute 9 & 10 W. 3. c. 17. it is enacted, That from and after the 24th of June 1693. all Bills of Exchange drawn in, or dated at and from any trading City or Town, or any other Place in the Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, of five Pounds or upward, upon any Person of or in London, or any other trading City Town or Place, in which Bill or Bills shall be acknowledged the said Value to be received, and shall be drawn payable at a certain Number of Days, Weeks, or Months, after the Date: That from and after the Presentation and Acceptance of the said Bills of Exchange (which Acceptance shall be by under-writing the same under the Party's Hand so accepting) and after the Expiration of three Days after such Bill shall be once due, the Party to whom such Bill is made payable, his Ser-

For Negotiating of Bills of Exchange in England.

9 & 10 W. 3. cap. 17.

vant,

Bill of Exchange.

How to be protested. **Bill to be protested by a Publick Notary; and in Default of such Publick Notary, by any other substantial Person of the City, Town or Place, in the Presence of two or more credible Witnesses, (Refusal or Neglect being first made of due Payment thereof) which Protest shall be made and wrote under a fair written Copy of the said Bill of Exchange, in the Words following:**

The Words of the Protest. **Know all Men, That I A. B. on the Day of at the usual Place of Abode of the said D. have demanded Payment of the Bill, of which the above is a Copy, which the said D. did not pay. Wherefore I the said A. B. do hereby Protest the said Bill: Dated the Day of Anno Dom.**

When to be sent to the Party from whom received. **Which Protest so made, shall, within fourteen Days after the making thereof, be sent, or due Notice shall be given to the Party from whom the said Bill was received, who is, upon producing such Protest, to repay the said Bill, with Interest and Charges, from the Day such Bill was protested; for which Protest shall be paid not exceeding 6d. And in Default or Neglect of such Protest made and sent, or due Notice given within the Days before limited, the Person failing or neglecting shall be liable to all Damages, Costs, and Interest, which shall accrue thereby.**

Proviso, where the Bill is lost. **Provided, If such Bill be lost or miscarried within the Time before limited for the Payment thereof, then the Drawer shall give another Bill of the same Tenor, the Person giving Security to indemnifie him against all Persons, in case the said Bill so alledged to be lost or miscarried, be afterwards found.**

By another Act 3 & 4 Anne Regine, c. 9. **it is enacted, That in case of presenting any such Bill, the Party on whom the same is drawn, shall refuse to accept the same by under-writing the same as aforesaid; the Party to whom such Bill is payable, his Servant, Agent, or Assigns, may cause such Bill to be protested for Non-acceptance, as in case of Foreign Bills of Exchange, for which Protest shall be paid 2s. and no more.**

How to proceed upon the Non-acceptance of such Bill. **Provided, That no Acceptance of any such Bill shall charge any Person, unless the same be under-written or indorsed in Writing thereupon: And if such Bill shall not be accepted by such Under-writing, or Indorsement in Writing, no Drawer of such Bill shall be liable to pay any Costs, Damages, or Interest thereupon, unless such Protest be made for Non-acceptance; and within fourteen Days after such Protest, the same be sent, or Notice given to the Party from whom such Bill was received, or left in Writing, at the usual Place of his Abode.**

What Acceptance shall bind.

How to be protested.

How to proceed upon the Non-acceptance of such Bill.

By another Act 3 & 4 Anne, cap. 9.

How to be protested.

The Words of the Protest.

is a Copy, which the said D. did not pay. Wherefore I the said A. B. do hereby Protest the said Bill: Dated the Day of Anno Dom.

When to be sent to the Party from whom received.

Proviso, where the Bill is lost.

By another Act 3 & 4 Anne, cap. 9.

How to proceed upon the Non-acceptance of such Bill.

How to be protested.

What Acceptance shall bind.

Bill of Exchange.

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And if such Bill be accepted, and not paid, before the Expiration of three Days after the same shall become due, no Drawer shall be compellable to pay any Costs, Damages, or Interest thereupon, unless a Protest be made and sent, and Notice given in manner aforesaid: Nevertheless, every Drawer shall be liable to pay Costs, Damages, and Interest upon such Bill, if any one Protest be made for Non-acceptance or Non-payment thereof, and Notice sent, given or left, as aforesaid.

Where the Drawer shall be compellable to pay Interest.

And where Costs and Damages.

Provided, That in all such Bills, the Value must be acknowledged and express'd in such Bill to be received; and such Bill must be for the Payment of 20*l.* or upwards, and protested as aforesaid; otherwise not to have the Benefit of this Act.

Must be Value received.

And for the Payment of 20*l.* and upwards.

Provided, That if any Person accepts such Bill in Satisfaction of a former Debt, the same shall be accounted a full Payment of such Debt, if such Person accepting the same for his Debt, doth not take his due Course to obtain Payment thereof, by endeavouring to get the same accepted and paid, and make his Protest for Non-acceptance or Non-payment, as aforesaid.

Acceptance of such Bill shall be a full Payment of it.

Provided, This Act shall not extend to discharge any Remedy against the Drawer, Acceptor, or Indorser of such Bill.

Shall not discharge any Drawer, Acceptor, or Indorser.

It is by the same Act further Enacted, That all Notes in Writing, which shall be made and signed by any Person, Body Politick or Corporate, or by the Servant or Agent of any Corporation, Banker, Goldsmith, Merchant or Trader, who is usually intrusted by him, or them, to sign such Promissory Notes for him or them, whereby such Person or Persons, Body Politick and Corporate, his, her, and their Servants or Agents as aforesaid, doth, or shall promise to pay to any other Person or Persons, Bodies Politick or Corporate, his, her, or their Order, or to the Bearer, any Sum of Money mentioned in such Note, shall be taken and construed to be by Virtue thereof due and payable to any such Person or Persons, Bodies Politick and Corporate, to whom the same is made payable.

All Promissory Notes shall be taken to be due and payable to the Persons to whom they are made payable.

And also every such Note payable to any Person or Persons, Bodies Politick and Corporate, his, her, or their Order, shall be assignable or indorsable over in the same manner as Inland Bills of Exchange are, or may be, according to the Custom of Merchants: And that the Person or Persons, Bodies Politick and Corporate, to whom such Sum of Money is or shall be by such Note made payable, shall and may maintain an Action for the same, in such manner as he, she, or they, might do upon an Inland Bill of Exchange, made or drawn according to the Custom of Merchants, against the Person or Persons, Bodies Politick and Corporate, who, or whose Servant or Agent, signed the same: And that any Person or Persons, Bodies Politick

Which Notes shall be assignable and indorsable as Inland Bills.

And the Persons to whom made payable, may sue for the same as upon Inland Bills.

tick and Corporate; to whom such Note that is payable to any Person or Persons, Bodies Politick and Corporate, his, her, or their Order, is indorsed or assigned, or the Money therein mention'd, ordered to be paid by Indorsement thereon, shall and may maintain his, her or their Action for such Sum, either against the Person or Persons, Bodies Politick and Corporate, who, or whose Agent or Servant, as

And recover Damages and Costs.

aforesaid, signed such Note, or against any of the Persons that indorsed the same, in like manner as in case of Inland Bills of Exchange, and shall recover his, her or their Damages and Costs of Suit.

Where the Defendant shall recover his Costs.

And if such Plaintiff be nonsuited, or a Verdict found against him, the Defendant shall recover his Costs.

The Action to be brought within the Time appointed by the Statute of Limitations.

And it is further enacted, That every such Action shall be commenced and brought within such Time as is appointed for commencing or suing of Actions upon the Case, by the Statute made

21 Jac. 1. cap. 16.

21 Jac. cap. 16. Intituled, *An Act for Limitation*

of Actions, and for avoiding Suits in Law. (Note, This Act of 21 Jac. is commonly call'd, *The Statute of Limitations*.)

Who may issue out these Notes.

Provided, That no Body Politick or Corporate shall have Power, by this Act, to issue or give out any Notes by themselves or their Servants, other

than such as they might have issued out, if this Act had not been made. This Act was made perpetual 7 & 8 Anne.

Bishop.

See Courts.

Bishops act with and without Dean and Chapter.

WHAT Acts a Bishop may do, concerning his Possessions, without the Assent of the Dean and Chapter; and what with their

Consent: And also what he cannot do at all, tho' with their Consents. See the Bishop of Sarum's Case. 10 Rep. from 58. b. to 62. b.

What Acts a Bishop *de facto* may do, and what not.

All judicial Acts made by a Bishop *de facto*, as Admissions, Institutions, &c. shall be good; but not voluntary Acts which tend to the Depauperation of the Successor. *Godolphin* 38. Sect. 23.

How in the Case of a *Commendam*.

Also how it stands with a Bishop in the Case of a *Commenda Retinere*, See in Title *Commendams*, and *Latch* 31 and 333, where is very much good

Matter relating to *Commendams*, and the Manner of making, and Power of a Bishop.

Bona & Catalla Felonum.

NOne may have Bona & Catalla Felonum, but
by Grant only. Mod. Cases 443.

Who may have them.

Bona Notabilia.

See Administration.

When a Man hath at the Time of his
Death Goods or good Debts in any
other Diocese, or peculiar Jurisdiction

Bona Notabilia, what
they are, and who is said
to have them.

within that Province, besides his Goods in the Diocese where he dies,
amounting to the Value of five Pounds at the least, he is said to
have Bona Notabilia: And then the Probate of his Will, or granting
of Administration, belongs to the Archbishop of the Province, whe-
ther it be within that of Canterbury or that of York: But this does
not prejudice those Dioceses, where, by Composition or Custom, Bo-
na Notabilia are rated at a greater Sum. Book of Canons, 1 Jac.
Can. 92, 93. Perk. Sect. 489.

Bond, See { Bail-Bond.
Obligation.

Books.

THE Books here intended, are those which
we call Paper-Books, and Copies of Re-
cords: The Paper-Books are those which
are made up by the Clerks of the Papers
of the Court of King's Bench: The Copies of Records are those
Books which are made by the Attorneys for the Judges, where there
are Special Verdicts, Demurrers, or Motions in Arrest of Judg-
ment.

Books, what.

Special Pleadings and Demurrers to be sign'd by some Counsellor's Hand.

No special Pleadings or Demurrers in Law in any Cause here in Court now depending, or hereafter to be prosecuted, shall be received by the Clerks of the Papers of this Court before such Pleas or Demurrers in Law shall be signed by the Hand of some Counsellor for that Purpose retained. And it is also further ordered, That the

Clerk of the Papers to subscribe the Counsels Names to Copies of Pleas, &c.

Clerks of the Papers of this Court, in all Copies of Pleas and Paper Books by them to be made up, shall subscribe to such Copies of Pleas and Paper Books, the Names of the Counsel who have signed such Pleas, as well on the Behalf of the Plaintiff as of the Defendant; and that in all Books delivered to the Judges of this Court, the Names of the Counsellors who did sign those Pleas, as well on the Behalf of the Plaintiff as the Defendant, shall be subscribed to those Books by the Clerks or Attorneys who shall deliver the same. *Per Cur. Pasch. 16 Car. 2. Regis.*

Attorneys to write the Number Roll of the Cases in Books delivered to the Judges.

When Books are delivered to the Judges, in Causes which are to be argued; the Attorneys that deliver the Books, ought to write the Number Roll of the Cases to be argued upon the Book; otherwise they will not receive them. *Mich. 22. Car. B. R.* That they may know in what Year and Term the Causes were entred, to have Recourse to the Records of those Cases upon any Occasion.

Books for the Judges to be at equal Charges of both Sides.

The Books which are to be delivered to the Judges, of Causes to be argued, are to be made at the equal Charge of the Plaintiff and Defendant: For it being doubtful in such Cases which are to be argued, whether the Law be on the Plaintiff's Side, or on the Defendant's, the arguing of the Case doth equally concern them; and therefore it is Reason they should be at an equal Charge in bringing the Cause to be argued and determined. But if the Defendant or Plaintiff neglect to deliver Books to the Judges, the Party who would have the Cause come on must deliver them; otherwise the Cause will not come on: And if the Judgment of the Court is for the Party who delivered all the Books, he shall be allowed for the Charges of his Books in taxing of the Costs.

But if either Party neglect or refuse to deliver them, the Party who delivers them shall be allowed in Costs for them.

The Books ought to be delivered at the least four Days before the Cause comes on.

The Attorneys ought to deliver Books to the Judges at least four Days before the Cause is to come on in the Paper, so that the Judges may have Time to peruse the Books, and be ready to speak to the Cause when it comes on.

The Plaintiff to give Books to the two Senior Judges, and the Defendant to the other two Judges.

When Books are to be delivered to the Judges in Causes which are to be argued, the Plaintiff ought to give Books to the two Senior Judges, and the Defendant ought to give Books to the two Puisse Judges: But if the Defendant's Attorney doth not deliver his two Books as he ought to do, the Plaintiff's Attorney must take Care to do it, and it will be allowed him in Costs by the Secondary. So likewise if the Plaintiff's Attorney doth not do it, the Defendant's must.

Borough-English.

See Copyhold.

Borough-English is a Custom in some ancient Boroughs and Copyhold Manors, That if a Man hath several Sons and dies, the youngest shall inherit what his Father died seized of, as Heir to his Father, by Force of the said Custom. Borough-English, Quid.

Where the Custom (as in Borough-English) gives the Inheritance to the youngest Son; there, if the youngest Son dies without issue Male in the Life-time of his Father, but leaves a Daughter who survived the Father; the Daughter, and not the youngest Son which the Father had at the Time of his Death, shall have the Estate. Where the Daughter of the youngest Son shall inherit. 3 Anne B. R.

But where a Surrender was to the Use of himself for Life, and after to his Wife for Life, and he dies, leaving three Sons, the youngest dies in his Mother's Life-time, and leaves no issue: Here the eldest Son shall have the Land as Heir to his youngest Brother, though he did not die seized; but the Reversion being in the youngest Son, the eldest shall inherit as Heir to him. Where the eldest Son shall have the Land, as Heir to his youngest Brother. 1 Cro. 410.

Where the Custom is that the Land shall go to the youngest Son, it doth not give it to the youngest Uncle, because Customs shall be taken strictly. It shall not go to the youngest Uncle, and why. 4 Leon. Case 384.

Proof by Witness of Borough-English Tenure shall not be admitted; but there ought to be Precedents in the Court-Rolls to shew it. What Proof there ought to be of Borough-English Tenure. Ibid.

A Man seized of Borough-English Lands, devises them to A. and his Heirs for the Life of B. A. dies, living B. leaving two Sons; the youngest, and not the eldest, shall have the Land: Because the Custom goes with the Land, and guides the Descent to the youngest Son. The Custom goes with the Land, and guides the Descent to the youngest Son. 2 Lev. 138, 139.

Brach.

Breach.

See : Assignment.
Assumpsit.
Condition.
Covenant.
Debt.
Replication.

Breach, *Quid.*

Breach is where a Man commits a Breach of a Condition of a Bond, or of his Covenant, by the not performing of them; and upon an Action brought thereupon, the

Breach must be assigned.

How the Breach must be assign'd in an Action for Covenant broken.

Hill. 22. Car. 1. B. R. Else the Party can make no Discharge for himself, because his Charge is incertain.

How to declare in an Action of Covenant for not repairing of Houses, &c.

Where one brings an Action for a Covenant broken; he ought to assign the Breach of it in such a Manner, that the Defendant may take an Issue. If one brings an Action of Covenant against another for not repairing of Houses, &c. demised unto him, he ought to assign particularly wherein the want of Reparations consists, and not to declare generally. *Hill. 22. Car. 1. B. R.* For Reparations consist of Particulars; and if they be assign'd generally, for want of them, the Defendant cannot tell how to give an Answer.

How and when the Breach is to be assigned in an Action of Debt upon Bond, condition'd for Performance of Covenants.

If an Action of Debt be brought upon an Obligation, with a Condition for the Performance of Covenants, the Plaintiff is not to assign in what the Breach is, until the Defendant has pleaded Performance of the Condition. *Hill. 22. Car. 1. B. R.* For before such Plea the Declaration shall be taken to be true, that the Condition is not broken, either in all or in Part; and so there needs no Assignment of a Breach: For wheresoever the Defendant's Plea goes in Avoidance of the Bond, or admits or supposes a Non-performance of the Condition, there needs no Breach in the Replication, only an Answer to the Matter pleaded: This holds generally true, except in the Case of Arbitration-Bonds.

In Covenant to provide Meat, Drink and other Necessaries, the Breach assigned was for not finding Meat, Drink, Apparel, and other Necessaries; and doth not shew what other Things were necessary: And held to be naught. *Cro. Jac. 486. pl. 3.* *Cro. Car. 202. pl. 5.*

Where the Breach assigned as general as the Covenant is not good; and why.

Where it is good.

How a Breach ought to be assigned with an Averment.

The Defendant was to pay upon Confession or Proof of the imbezilling of the Plaintiff's Goods by A. B. The Plaintiff replies that such a Day *probatio fuit facta*, that A. B. had imbezilled of his Master's Goods to the Value of 4 l. of which he gave Notice to the Defendant: And demurred unto, because he doth not aver in Fact that A. B. imbezilled Goods to such a Value, and therefore naught. *Cro. Jac. 488. pl. 3.*

Where several Breaches are assigned, and the Defendant demurs upon the whole Declaration; the Plaintiff shall have Judgment for all them where the Breach is well assigned, for they are as several Actions. *Cro. Jac. 557. pl. 2.*

Where several Breaches are assigned, and the Defendant demurs upon the whole Declaration, the Plaintiff shall have Judgment for all that are well assigned.

Where a thing is to be done by a Person or his Assigns, the Breach must be assigned, that it was done neither by one or the other; but when it is to be done to such a Person or his Assigns, there it will be sufficient to say in the Breach, that the Defendant hath not done such a Thing to the Plaintiff, without saying Assigns. *5 Mod. 133.*

How to be assigned where a Thing is to be done to the Plaintiff or his Assigns.

Formerly, if there were twenty several Things in the Condition of a Bond, and every one of them was broken, yet when you come to assign a Breach you must assign but one Breach, and no more; for if you assign more, it was then held to be double, one Breach being as much a Forfeiture of the Penalty in Law, as twenty: But in an Action of Covenant, you may assign as many Breaches as you please. But see for this, the Alteration made by the Statute of 8 & 9 W. cap. 10. set out at large in the Title Covenant. *Vide Postea* in the next Paragraph, where you may assign as many Breaches as you please.

How to assign a Breach before the Stat. 8 & 9. W. cap. 10.

Where an Action shall be brought upon a Bond for Performance of Covenants, the Plaintiff may assign as many Breaches as he pleases; and the Jury upon the Trial shall assess Damages and Costs, for such Breaches so to be assigned, as the Plaintiff upon Trial shall prove to have been broken. 8 & 9. W. 3. cap. 10. sect. 8.

How since that Statute, What Breaches may be assigned upon a Bond for Performance of Covenants.

What Damages the Jury may assess. 8 & 9 W. 3. cap. 10. sect. 8.

Also, if Judgment shall be had by Demurrer, Confession, or *Nil Dicit*, the Plaintiff may suggest upon the Roll as many Breaches as he shall think fit; upon which shall go a Writ of Enquiry for a Jury to appear before the Justices of Assize of the County, to enquire of the Truth of every one of those Breaches, and to assess Damages that the Plaintiff hath sustained thereby. *Ibid.*

A Writ to enquire of the Breaches.

What shall be a Satisfaction of the present Damages.

But Judgment shall stand. For the future Disability to perform, is a Breach of Covenant.

8 & 9 W. 3. cap. 10.

Where a Man by his own Act disables himself to perform, it is a Breach of Covenant. 5 Rep. 21. a.

What is not a sufficient Breach.

Breach may be assigned as generally as the Covenant it self.

Where the Breach may be assigned as general as the Breach, and good, especially after a Verdict upon *non est factum*

How to assign a Breach upon a mutual Promise.

and the Residue upon executing of the Writing; and that, in Consideration that the Plaintiff had paid the 20*l.* and promised to perform the Agreement on his Part, the Defendant promised to perform it on his; then he says, That the Defendant hath not performed it on his Part. This being a mutual Promise, the Breach is well assigned in the general Words. 3 Lev. 319. Adjudged the rather because after a Verdict.

What are the Breaches of the Good Behaviour, and what not,

Also, that the Defendant paying of the Damages and Costs, there shall be a Stay of Execution on the said Judgment: But such Judgment shall remain to answer any further Breach that may be sustained, on which the Plaintiff may have *Sci. Facias* against the Defendant. *Vide Stat. 8. & 9 W.*

3 cap. 10.

It is not a sufficient Breach to say, *J. S. habens legalem Titulum*, enter'd, without saying what Title. 1 Lev. 301. 1 Mod. 101. 1 Mod. 292 agrees with *Levinz.*

Breach of Covenant as generally as the Words of the Covenant are, is good. 2 Lev. 170. *Cro. Jac.* 171.

A Man let an House for sixty Years, and covenanted that he was seized in Fee of an indefeazable Estate, and assigns for Breach that he was not at the making of the Indenture lawfully seized in Fee:

The Defendant pleads *Non est factum*, and found against him: And moved that the Breach is too general, not shewing that any other was seized, nor why the Defendant was not seized. *Curia.* As the Covenant is general, so may the Breach be assigned of *Non est factum*, especially here, where he hath made it good by pleading. *Cro. Jac.* 369.

The Plaintiff sets forth, That the Defendant agreed to sell him a sixth Part of a Ship for 500*l.* and that the Plaintiff should pay 20*l.* in Hand,

and the Residue upon executing of the Writing; and that, in Consideration that the Plaintiff had paid the 20*l.* and promised to perform the Agreement on his Part, the Defendant promised to perform it on his; then he says, That the Defendant hath not performed it on his Part. This being a mutual Promise, the Breach is well assigned in the general Words. 3 Lev. 319. Adjudged the rather because after a Verdict.

Where a Man threatens another to beat him, or to fight with him (altho' nothing be done,) these are Breaches of the Good Behaviour, but reproachful Words are no Breach. *Cro. El.* 86.

Bridges.

See Ways.

Common Bridges of Right ought to be repaired by the Inhabitants of the County, if it be not known who else ought to repair them. Cro. Car. 365, 366. Danv. 743.

Common Bridges must be repaired by the County.

A private Person may be obliged to repair a Bridge *ratione tenuræ*, but not *ratione prescriptionis tantum*; but a Body Politick may be bound, either *ratione tenuræ* *sive* *prescriptionis*. 2 Inst. 700. Co. 13 Rep. 33.

How Private Persons shall be obliged, and how Corporations.

2 Keb. 43.

If a Man erects a Mill, and makes a new Cut for the Water to come to it, and makes a new Bridge over it that People used to go over as a Common Bridge, this must be repaired by the Owner of the Mill: Because it was erected for his own Benefit. But if a Man makes a Bridge only for the Common Good of the King's Subjects, he is not bound to repair it. 2 Inst. 701.

A Bridge erected for a private Use, but used as a Common Bridge, shall be repaired by the Erector:

But not when erected for the Common Good only.

If a Man hath only Part of the Lands which *ratione tenuræ* ought to repair a Bridge; yet he alone may be presented, and compelled to repair it, and he must take his Remedy for Contribution against the rest: For Bridges are of absolute necessity, and must not lie unrepaired. 2 Jones Rep. 173. But the Party may in such a Case have a Writ to the Justices *De deonerando pro rata portionis*. F. N. B. 235. b. Reg. 268, a. 2 Inst. 700.

He that hath but Part of the Land liable, must repair it.

A Writ *De deonerando pro Rata Portionis*.

If a Manor be charged *ratione tenuræ*, the ancient Freeholders and Copyholders are not liable to contribute; for nothing is Part of the Manor but the Demesnes and Services: But they who have any Part of the Demesnes by Purchase, must contribute.

Where a Manor is charged *ratione tenuræ*, who must contribute.

Hardr. 131.

The County ought to maintain Bridges, because they are for the Ease and Benefit of the People, unless it be shewn who ought to repair. Cro. Car. 366.

The County ought to repair them, unless they shew who ought.

If Inhabitants of a County are indicted for not repairing a Bridge, they cannot plead Not guilty, but must set forth who ought to repair it, and traverse that they ought to repair it. 2 Lev. 112. 1 Ventr. 256.

Inhabitants must not plead Not guilty.

What they must plead.

The

How the Indictment
must be.

Bridges

The Indictment must say, that it is *Pons publicus & communis, situs in alta regia via super flumen, &c.*
3 Inst. 601.

Burglary.

See Felon and Felony.

What Burglary is.

Burglary by the Common Law, is where a Man in the Night-time breaketh and entreth into the house of another Man, to the Intent to commit some Felony within the same, whether the felonious Intent be executed or not.

How Burglary may
be committed without
breaking open a House.

Burglary may be committed by one, tho' he do not break a House open; for if he be within the House, and steal away the Goods in the House, and open the House on the Inside, and go out, and carry away the Goods, this is Burglary. *Trin. 22 Car. 1 B. R.* For this is in the Law a violating of the House, and depriving the Dweller of his Safety in it.

What shall be Burglary, by the Statute of 10 & 11. *W. 3. cap. 23.*

Goods of 5 s. Value, or more, out of a Shop Ware-house, Coach-house, or Stable, though not actually broke open.

Coach-house or Stable (to be put in Fear); or shall assist, hire or command any Person to commit such Offence; being thereof convicted or

Shall be debarred of Clergy.

39 *Eliz. cap. 15.*

Stat. 3. & 4 *W. & M.*

and to bring others

Breaking of an House in the Day-time, Felony by 5 *Anu.*

The Reward for the apprehending and convicting.

By a Statute made 10 & 11 *Willielmi Tertii, cap. 23.* it is enacted, That every Person, who shall by Night or by Day, in any Shop, Ware-house, Coach-house, or Stable, feloniously steal any Goods of the Value of 5 s. or more, although such Shop, Ware-house, Coach-House or Stable, be not actually broken open by such Offender, and although there be no Person in such Shop, Ware-house, Coach-house or Stable (to be put in Fear); or shall assist, hire or command any Person to commit such Offence; being thereof convicted or attainted, shall be absolutely debarred, and excluded from the Benefit of the Clergy. See also 39 *Eliz. Car. 15.*

See the Statute, 3 & 4 *W. & M.* entituled, "An Act to take away Clergy from some Offenders to Punishment."

All Persons who shall take any Person guilty of Burglary, or the felonious breaking and entring into any House in the Day-time, and prosecute him until convicted of such Burglary and Felony, shall receive above the Reward given by the Statute of 10 & 11 *W. 3. cap. 23.* (which was a Certificate

to be discharged from all Parish and Ward-Offices) the Sum of 40 l. within one Month after Conviction, to be paid by the Sheriff of the County where such Felony or Burglary shall be committed, without any Fee for the same, upon tendring to him one of the Judges Certificate for that Purpose, without Fee or Reward; and if the Sheriff doth not pay it within one Month, then he shall forfeit double the Money, to be recovered by Action of Debt in any of the Courts at Westminster with treble Costs.

That if any Watchman or other Person shall be killed endeavouring to apprehend such Burglar, such Person to whom the Right of Administration to such dead Man shall belong, shall have 40 l. upon such Certificate as aforesaid, to be paid as is aforesaid. See Title Felon and Felony.

That the Sheriffs upon producing of the Certificates and Receipts, shall be allowed it in their Accounts; and if the Sheriff shall not have sufficient in his Hands, then he shall be repaid by the Lord Treasurer.

That if any Person out of Prison who shall commit any Burglary or Felony as aforesaid, shall discover two or more Persons, who already have or shall commit such Burglaries or Felonies, so as two or more be convicted, then such Discoverer shall have the like Reward of 40 l. and also be entitled to Her Majesty's Pardon for all Burglaries, Robberies and Felonies; (except Murder and Treason) which shall be a good Bar to an Appeal.

If a Man hath two Houses, and lives sometimes in one, and sometimes in the other, if the House he doth not then inhabit in be broken in the Night, to the intent to steal the Goods, it is Burglary.

Popb. 52.

If any Watchman or other Person be killed, his Administrator shall have the 40 l.

If the Sheriff hath not enough in his Hands, the Lord Treasurer must repay him.

Where one of the Gang discovers, he shall have 40 l.

And what Pardon he shall have.

It shall be a good Bar to an Appeal.

Burglary to break a House in the Night, to steal the Goods, tho' no Body in it.

to be discharged from all Tithes and Ward Offices) the sum of 40 s. within one Month after Conviction, to be paid by the Sheriff of the County where such Felony or Burglary shall be committed, without any Fee for the same, upon tendering to him one of the Judges Certificate for that purpose; and if the Sheriff shall not pay it within the time, he shall forfeit double the Money, to be recovered by Action of Debt in any of the Courts at Westminster with treble Costs.

By-Laws.

See London.

By-Laws, what.

By-Laws are certain Orders and Constitutions made by Corporations for the well governing of their Members: Which By-Laws must be made by Virtue of the King's Charter of Prescription, and ought to be approved of by the Lord Chancellor, Lord Treasurer, or Chief Justices, as the Statute of 19 H. 7. cap. 7. directs. There are also By-Laws made by Commoners, or Inhabitants in Villages, &c.

Every City and Corporation may make By-Laws of common Right, without any Clause in their Charter for that purpose.

The Privilege of making of By-Laws is vested in the City of London by common Right, if not by Custom; for it concerns the better Government of the City: And every City and Town Corporate may, by a Power inherent to their Constitution, make By-Laws for the Government of that Body Politick; and this is the true Touchstone of By-Laws. And, Note, It was said by the Lord Hobart in his Rep. Fol. 211. That he holds, that the Power to make By-Laws, given by special Clause in all Corporation-Patents, is needless, that Power being included by Law in the incorporating Act: For as Reason is given to the natural Body to govern it, so the Politick Body must have Laws as a Politick Reason to govern it. 5 Med. 429;

A Custom to make a By-Law when Necessity requires, how to be pleaded.

Where there is a Custom in a Manor for the Homage to make By-Laws, when Necessity requires, it ought to be set forth, that there was Necessity for it at the Time when made: And see many Cases there where a Man is to have one thing for the Cause of

another, he must alledge the thing done, for which he must have it. 3 Leon. Case 73. Fol. 39.

By-Laws must be Subject to the Common Laws,

By-Laws must always be squared, and subject to the Rule of the Law of the Realm, as subordinate to it. Hob. 211.

What By-Laws Inhabitants of a Vill may make without Custom.

Inhabitants of a Vill may, without any Custom, make Ordinances and By-Laws for the Reparation of the Church or Highway, or such Thing which is for the publick Good; and the greater Number shall bind the lesser without any Custom: But if it be for their private Profit, as the well ordering of their Common, or such like, this cannot be done without Custom. 5 Rep. 63. a. 67. b.

By-Laws.

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So also if the major Part agree, that no Man shall put in his Beasts before such a Day, this shall bind all those who do not assent; for if it should not bind without the Assent of all, there never could be a By-Law made. *Dal. 103. pl. 42. See Cro. Car. 497, 498.*

Where a By-Law is made by Custom, which takes away the whole Profit of the Commoners, it is void; but where it only abridges or adds Bounds or Limits to it, it is good. *March 28. pl. 64.*

A By-Law that none should put in his Cattle before such a Day, is good; for such By-Law doth not take away, but order the Inheritance; But where the By-Law is to restrain a Man to one sort of Cattle, who hath Common for all manner of Cattle, there it is against Common Right. *1 Leon. 190. Case 270. See Cro. Car. 497, 498.*

A Pain certain in a By-Law cannot be abridg'd or alter'd. *3 Leon. Case 21.*

Every Freeman and Citizen of London is supposed to be present where the whole Body resides; and though in Fact a Member who was absent was chosen there, yet it being his Duty to be there, and he is supposed in Law to be there, he shall be obliged to take Notice of this Election at his Peril. *5 Mod. 442.*

Corporations cannot make By-Laws or Constitutions, without Custom or the King's Charter. *5 Rep. 63. a. See Cro. Car. 497, 498. Carter 178, 179. 5 Mod. 104, 105, 106.*

A By-Law made by a Corporation may inflict a reasonable Penalty, but cannot imprison. And the Penalty may be levied by Distress, or Action of Debt. *5 Rep. 64. a. See Mo. 411. pl. 563.* But whether there can be a Sale of the Distress or no, see *1 Keb. 733. pl. 12.*

No Man can be prohibited by a By-Law to trade, farther than *5 Eliz. directs. 11 Rep. 536.* Nor by the Common Law to work in a lawful Trade. *Ibid.*

The *19 H. 7. cap. 7.* doth not corroborate any By-Laws, but leaves them to be affirmed or disaffirmed, according to the Reasonableness or Unreasonableness of them; but saves the Makers of them from the Penalty of *40 l.* if they are not good. *11 Rep. 54. b. See Co. 5. Rep. 63. b.*

A new Corporation not having any Prescription to appropriate to themselves, and exclude others, cannot make a By-Law to exclude all others from using a Trade in their Town wherein they were not Apprentices, they having served as Apprentices to it in another Place. *Hob. 285.* But a By-Law founded upon a Prescription or Custom, may do it. *Raym. 294. Carter 69. 2 Brownl 178, 182.*

The major Part of the Commoners shall bind the minor Part.

could be a By-Law

What By-Laws touching Commons are good, and what not.

A By-Law must order, not take away the Inheritance.

Or restrain to one sort of Cattle.

See

A Pain certain in a By-Law cannot be alter'd

No Notice need to be given upon an Election.

What Corporations can make By-Laws.

A By-Law cannot imprison, but the Penalty may be levied by Debt or Distress.

Whether Sale of the Distress or no, *Quere.*

Common Law prohibits no Man to work at a lawful Trade, and how far. *5 Eliz.*

How far By-Laws can be confirmed.

19 H. 7. cap. 7.

11 Rep. 54. b. See

What By-Laws by Corporations cannot exclude the Exercise of Trades:

And what may.

By-

By-Laws may be made for ordering not restraining of Trade.

By-Laws, which make Monopolies, are void.

The By-Laws to be for the common Benefit, and not for the private.

An Apprentice or Journeyman shall not be bound not to keep a Shop without Licence.

72 H. 8. cap. 5.

How Proof to be.

Corporations cannot be Judges in their own Cause.

A Servant may make Clothes for his Master, &c.

A By-Law to enforce the Payment of a Livery-Fine, is good.

By-Laws cannot be made to bind Strangers.

May be recovered by Action of Debt.

A Penalty forfeited by a By-Law cannot be levied by Distress, unless specially directed.

Distress, without a Prescription to do it, or an Appointment or Limitation by the By-Law so to do. *Co. 5 Rep. 62. Dy. 321. pl. 23.*

A By-Law to levy by Distress and Sale, is void.

for the Forfeiture cannot be levied by Sale of the Offender's Goods. *2 Ventr. 182, 183.*

A By-Law upon Pain of Forfeiture of Goods, is void.

Directions for the making of By-Laws about Commons.

By-Laws cannot restrain a Man from any Branch of his Trade which is appertaining thereto by Law; but they may be made for ordering of Trades. *Palmer 396.*

A By-Law and Prescription to induce the Sole Traffick to one Corporation or one Person, and to exclude all others, is a Monopoly. *Mo. Fol. 591.*

All By-Laws ought to be for the common Benefit, and not for the private Benefit of any particular Person. *Goldsb. 79. Mo. 580.*

By 27 H. 8. cap. 5. No Apprentice or Journeyman shall, by Oath or Bond, be compelled not to keep any Shop, &c. without Licence of the Master: The Proof cannot be by Oath, for they have no Power to administer such Oath; and if the Proof must be by Indentures or Witnesses, perhaps the Corporation will not allow thereof, for which the Party would have no Remedy. Besides, by their By-Law they are made Judges in their own Cause, which is unreasonable. *Danv. 735.*

If a Servant makes Clothes for his Master, Mistress or Children, this is no exercising of a Trade. *1 Rol. Rep. 4. Co. 11. Rep. 54. a.*

A By-Law for a Livery-Man in London to pay a Sum of Money upon his being chosen and admitted, is a good By-Law, there being a Necessity for Money to support the Reputation and Honour of the City and his Company. *Danv. 736. Raym. 446, 447.*

A Corporation cannot make a By-Law to bind those who are not of their Body. *2 Ventr. 33.*

A Penalty may be recovered by Action of Debt, or levied by Distress. *Co. 5 Rep. 64.*

If a Corporation that hath a Power by Charter or Prescription to make By-Laws, makes a By-Law, and limits a Penal Sum to be forfeited for Non-performance; this cannot be levied by Distress, without a Prescription to do it, or an Appointment or Limitation by the By-Law so to do. *Co. 5 Rep. 62. Dy. 321. pl. 23.*

A Corporation by Charter makes a By-Law under a Penalty, to be levied by Distress and Sale of the Offender's Goods: This is no good By-Law; cannot be levied by Sale of the Offender's Goods.

A By-Law cannot be made upon Pain of Forfeiture of the Goods. *8 Co. Rep. 127. b. 2 Ventr. 183. 1 Keb. 733.*

See very good Directions for the making of By-Laws by Tenants of Manors for the better ordering of their Commons, *3 Leon. Case 63. Fol. 38, 39, 40, 41.*

Capias ad Satisfaciendum.

This is a Judicial Writ which issues out of the Record of a Judgment, where there is a Recovery of Debt, Damages and Costs, or either of them; and by this Writ the Sheriff is commanded to take the Body of the Party, and him safely to keep, so that he hath his Body in Court at the Return of the Writ, to satisfy the Plaintiff his Debt and Damages.

Ca. Sa. what.

Where the Body is taken upon a *Ca. Sa.* and the Writ is returned and filed, it is an absolute and perfect Execution against him, and no other Execution can be against his Lands and Goods. *Cro. Jac. 143. pl. 2.* But where two are condemned, and one of them is taken in Execution and dies, yet Execution may be sued out against the other. *Ibid.*

The Body taken in Execution is a full Satisfaction of the Judgment at the Common Law, until the Statute made 21 Jac. 1. cap. 24. which makes the Lands and Goods now liable.

Note, afterwards by a Statute made 21 Jac. 1. cap. 24. it is enacted, That the Lands and Tenements, Goods and Chattels of such Person dying in Execution, shall be liable to satisfy the Judgment.

There must be seven Days exclusive betwixt the Teste and Return of every *Capias ad Satisfaciendum*, to warrant a *Sci. Fa.* against the Bail; and the *Capias* ought to be delivered to the Sheriff of the County, or his Under-Sheriff, four Days exclusive (and none of them must be a Sunday) before the Return thereof: For the Defendant cannot render himself, but to the Sheriff or Under-Sheriff, and in the County where he is Sheriff or Under-Sheriff. *6 W. B. R.*

Ca. Si. to warrant a Sci. Fa. against Bail, how to be.

When to be delivered to the Sheriff.

A *Capias* duly sued out and returned may be filed afterwards: (*21 Car. 1. B. R.*) For the filing of it is not of the Essence of the Writ; but it is that which makes it a Record of the Court.

When a *Capias* may be filed.

The Sheriff cannot upon a *Ca. Sa.* take the Money, and discharge the Prisoner; because the Writ is *quod Capias* the Defendant, & *enm salvo custod. ita quod Habeas Corpus ejus*, such a Day, *coram Domino Rege apud Westmonasterium, ad Satisfaciendum eidem*, the Plaintiff, &c. But upon a *Fi. Fa.* he may take the Money. *Lutw. 586, 587.*

The Sheriff cannot take the Money, and discharge the Prisoner upon a *Ca. Sa.* and why,

Two are Bail, and Judgment against them on a *Sci. Fa.* and a *Capias ad Satisfaciendum* was sued out against one only, and good: Because the Recognizance, upon which the Judgment *quod habeat Executionem* was obtained, was joint and several, and so may the Execution be thereupon. *1 Lev. 226.*

Judgment against two upon a *Sci. Fa.*

And a *Ca. Sa.* against one only, is good.

See Title Bail.

A *Capias*

Where a *Ca. Sa.* lies
against an Executor or
Administrator.

A *Capias ad Satisfaciendum* lies not against
Executors or Administrators, but where a *Devasta-*
vit is returned by the Sheriff: Or, when upon a
Fieri Facias de bonis Testatoris or *Antecessoris* as the Case is, a *Nulla*
bonis is returned. *De 71. n. 44.*

Case, See Actions.

Certificate.

Costs.

Judges.

See Judgment.

Trial.

Certificate, what.

A Certificate is a Writing made in some Court
to give Notice to another Court of some-
thing done there; as a Certificate of the
Cause of Action is a Transcript briefly
made by the Clerks of the Crown, Clerk of the Peace, or Clerk of
Assize, to the Court of King's Bench, containing the Tenor and Ef-
fect of every Indictment, Outlawry, or Conviction, and Clerk attain-
ed, made or declared in any other Court.

The Court will not
make a Rule to a Judge
to certify what was
done before him.

Judges Certificates for
apprehending of Felons.

Trials by Bishops
Certificates.

A new Trial may be
granted upon a Judge's
Certificate.

whereupon the Court upon such Certificate, and on Payment of Costs,
usually grants a new Trial.

Certificate of a Record
out of an inferior Court
not amendable after it is
filed.

This Court will not make a Rule for a Judge
to make a Certificate to them of a Matter done be-
fore him; but if the Judge will do it voluntarily,
they will receive it: For this Court cannot have
Cognizance of such private Transactions of Things.
Judges Certificates for the Reward for appre-
hending of Burglars and Felons. See Title Felons.
For Trials by Bishop's Certificates, see Title
Trials.
The Justice of Assize before whom the Cause
was tried, may certify to this Court, if a Jury do
find a Verdict against the Evidence given them;
When a Certificate of a Record is made out of
an inferior Court, they ought to make the Certifi-
cate as they will stand to it at their Peril; for it
cannot be amended after it is filed: And if the Re-
cord be not truly certified, there lies an Action on
the Case against the Party that made the Certificate. (*Hill. 22 C. 1. B. R.*)

Certificate

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If there be Cause to certify the Court touching a Custom used in the City of London, this Certificate is not to be made in Writing, but the Recorder of London is to certify the Custom *ore tenus*, by Word of Mouth: For the Recorder is intended to be the best Conusant of the Custom; and he is also intended to be always in London; and therefore it is for the greater Dignity of this Court, that he attend in Person to give Satisfaction herein, than to make a Certificate, which will also require Witnesses to prove it; and consequently more Trouble and Delay in it. (*Trin. 23 Car. 1. B. R.*) But not if the Custom do concern the Lord-Mayor particularly. *Per Roll. Ch. Justice.*

Custom in London to be certified by the Recorder by Word of Mouth;

Except it concern the Lord Mayor.

The original Record is certified out of an inferior Court, and out of the Common Pleas, upon a Writ of Error. But the Transcript only into the Exchequer-Chamber.

Out of an inferior Court, and also out of the Common Pleas, the original Record is certified into this Court upon a Writ of Error brought to reverse their Judgments: But upon a Writ of Error returnable in the Exchequer-Chamber, there is only a Certificate of the Transcript of the Record, and not the Record itself: And after Judgment is affirmed or reversed, what is done in the Exchequer-Chamber is returned back by the Court, and enter'd upon the Record in the King's Bench, from which the Transcript was taken. *Trin. 24 Car. 1. B. R.*

The Prothonotaries of the Common Pleas will not make a Certificate of any Matter before them into this Court, without a Rule of this Court to enjoin them. (*Trin. 22 Car. 1. B. R.*) That is, they will not do it upon the Request of the Party concerned; because by such a Request they cannot be ascertained, whether the Court desire such a Certificate: For the Court speaks only by its Rules.

Prothonotaries of C. P. will not certify into B. R. without a Rule of Court to enjoin them.

Certiorari.

It there be Cause to certify the Court touching
a Custom used in the City of London, this Certifi-
cate is not to be made in Writing, but the Recor-
der of London is to certify the Custom as true, by

Certiorari.

See **2 O'Connell**.

Out of an inferior Court, and also out of the

Certiorari, what. **C**ertiorari is a Writ which issues out of the King's Bench to any inferior Court of Record, commanding them to certify to them the *Loguella*, viz. the Pleas which is before them, cum omnibus ea tangentibus; which when returned, then upon a Rule given, Bail must be put in before a Judge, or else a Writ of Procedendo will be granted. There is also a Writ of Certiorari which is sued out of the Crown-Office to certify Indictments, &c.

Quo Certiorari ought to be made to remove a Judgment out of an inferior Court, at the Prosecution of the Plaintiff in the Action, whereby to enable him to have Execution out of this Court to execute the Judgment of an inferior Jurisdiction, of absolute Necessity. *Per Mag. Livesay, & alios, &c.*

It is not necessary to have a Judge's Hand to a Writ of *Certiorari* to certify Diminution in a Writ of Error. (21 Car. B. R.) For it is authentick it self, and ought to be obeyed.

A Certiorari to remove an Indictment doth lie by the course of the Court, without moving the Court for it. *Mich. 22 Car. B. R.* But in many Cases there must be a Judge's Hand for it.

Where one prays a *Certiorari* at the Judge's Chamber, to remove an Indictment out of *London* or *Middlesex*, he ought to give Notice of his Desire to the other side three Days before, or otherwise is not to be granted. By *Twisden* Justice. See

That a *Certiorari* lies into Wales. *Idem* 206.

After a Writ of Error is brought, if the whole Record and Proceſs are not certified, or not truly certified thereupon, there muſt be a Writ of *Certiorari* out of this Court directed to the Court where the Judgment was given, to certifie into this Court ſo much of the Record or Proceſs as is wanting, or not

rot

After Writ of Error brought, if the whole Record be not certified, *Certiorari* lies to certify what was wanting.

not truly certified before. (*Mich. 22 Car. B. R.*) And when upon a Writ of Error or *Certiorari* a Return is made, it is not a Transcript, but the Record it self that is thereupon returned, which never goes back again for Execution, but the same is entered of Record in this Court, and affirmed or reversed as the Court sees Cause, and Execution is accordingly awarded thereupon by this Court.

Note, A *Certiorari* is never sued out after a Writ of Error, but where Diminution is alledged, for in the Writ of Error is contained a Command to certify the Record and Process, *cum paribus et tangent*, notwithstanding what is said before.

No *Certiorari* after Writ of Error, but when Diminution is alledged.

By *Glyn* Chief Justice in the Case of *one Gasfock*, *Hill. 1636. B. S.* The King's Bench Court may grant a *Certiorari*, and remove a Cause before Judgment out of an inferior Court, though the Cause cannot be determined here, if the inferior Court have no Jurisdiction of the Cause, or do not proceed therein according to the Rules of the Common Law; but if an inferior Court have Jurisdiction, and this Court hath not, no *Certiorari* ought to be granted, for it would be to no purpose to grant it; and if a *Certiorari* should happen to be granted, then upon such a Return made, this Court will award a *Procedendo*.

If inferior Courts have not Jurisdiction of the Cause, *B. R.* may grant a *Certiorari*, though the Cause cannot be determined here.

But if inferior Courts have Jurisdiction, no *Certiorari* to be granted.

A *Certiorari* to remove an Indictment is good, although it do bear Date before the taking of the Indictment which is to be removed by the *Certiorari*. (*Mich. 22 Car. B. R.*) For the Date is not material, and it may be granted to remove a subsequent Indictment, as well as an Indictment preceding the *Certiorari*.

Certiorari to remove an Indictment, good, though dated before the Caption of the Indictment.

This Court will upon Motion in an extraordinary Case grant a *Certiorari* to remove a Judgment given in an inferior Court, into this Court, to the intent that the Plaintiff may have a *Scire Facias* against the Defendant, to shew Cause why he should not have Execution upon his Judgment. (*Hill. 22 Car. B. R.*) This was done in the Case of *Rooke* against *Knight*, to remove a Judgment given in *Dymchurch*, Part of one of the Cinque-Ports in *Kent*: This is done in case the ordinary Way of taking out of Execution be hindered in the inferior Court, or where they refuse to grant out Execution; for this Court is the supreme Court of Justice to appeal unto in extraordinary Cases.

In what Cases *B. R.* will grant a *Certiorari* to remove a Judgment out of an inferior Court.

It was doubted whether a *Certiorari* doth lie to the Cinque-Ports. (*Pasch. 23 Car. B. R.*) Notwithstanding it was done in the Case of *Rooke* and *Knight* before cited. For if it should ordinarily be granted, it would much lessen their Privileges, and put those that dwell within such Jurisdictions to extraordinary Trouble and Charge.

Whether a *Certiorari* lies to the Cinque-Ports.

If a *Certiorari* be granted to one of the Parties, the other Party cannot have another.

Certiorari lies to Justices in a Liberty, unless the Liberty be excepted by Statute.

Law is of force as well within Liberties as without, except where a Liberty is exempted by some Statute.

It ought to be granted upon Matter of Law, not of Fact.

Certiorari lies not after Verdict.

If a *Certiorari* be torn, the Party may have another.

to the Court, because he had no Fruit of the first, and so it is all one as if he had not had any.

It lies to remove an Act of Common Council of London, if such Act be against Law.

people, and the due proceeding thereof is not to be interrupted by colour of a particular Custom or Privilege.

A new *Certiorari* granted to remove a Record upon a Writ of Error, after *in nullo est erratum* pleaded.

Molineux and Pride, 3 *W. & M.* For Judgments are favoured in Law, and are to be supported, as much as Justice will permit.

Plaintiff in Writ of Error may have a new *Certiorari* to remove the Record, after the Record is certified, and *in nullo, &c.* pleaded.

When *Certiorari* ought to be granted to remove an Indictment.

If one Party pray a *Certiorari*, and have it granted, the other Party cannot have another *Certiorari*, (*Pasch. 23 Car. B. R.*) for the same thing; for the second *Certiorari* would be to no purpose, and the Law will not have things done in vain.

When Justices have Authority given them by a Statute within a Liberty, a *Certiorari* lies to them if the Liberty be not excepted. (*Hill. 23 Car. B. R.*)

For a *Certiorari* being grantable at the Common

A *Certiorari* ought to be granted upon a Matter in Law only, and not upon a Matter of Fact. (*Pasch. 23 Car. B. R.*) For Matters of Law only are disputable by the Court, and Matters of Fact by Juries.

A *Certiorari* doth not lie to remove a Cause out of an inferior Court after a Verdict is given in it. (*Mich. 24 Car. B. R.*) For then the Cause is determined, and so in vain to remove it; but the Process then is a Writ of Error. *Vide ante.*

If a *Certiorari* to certify a Record, be by some mishap so torn or defaced, that the Record cannot be perfectly certified by it, the Party may have an *alias Certiorari*, (*Mich. 24 Car. B. R.*) upon a Motion

A *Certiorari* may be granted to remove an Act of Common Council of the City of London, if the Act be made against Law. (6 *Maii* 1650. *B. S.*)

For the Common Law is the Birth-right of the People, and the due proceeding thereof is not to be interrupted by colour of a particular Custom or Privilege.

The Court may grant a new *Certiorari* to remove a Record before them upon a Writ of Error brought after that *in nullo est erratum* is pleaded, if it be *ad informandam Curiam*, in affirmance of the Judgment; (*Trin. 1651. B. R.*) So it was *inter*

By *Glyn* Chief Justice, *Pasch. 1658.* It was said that the Plaintiff in a Writ of Error may have a new Writ of *Certiorari* to remove the Record, after that the Record is certified, and the Defendant hath pleaded *in nullo est erratum*, for it may be the right Record is not removed.

Note, *Rolle* Chief Justice said, That he did not use to grant a *Certiorari* to remove an Indictment, but where the Party that prays it doth shew good Cause

Cause why it should be granted, viz. That there cannot be an Indifferent Trial had in the County where the Indictment was found; and where he doth grant it, he orders that it shall be tried the next Term following. (24 Car. B. R.) For Indictments generally concern the Commonwealth, and therefore Delay is not to be admitted in the Prosecution of them.

A Certiorari ought not regularly to be granted to remove an Indictment, after the Party indicted hath traversed and pleaded to the Indictment, by Roll. Mich. 1634. B. R. For by so doing he admits that he is contented it shall be tried where it was preferred.

Certiorari ought not to be granted after the Party has traversed and pleaded to the Indictment.

A Certiorari to remove an Indictment, ought not to be made by any of the Clerks in the Crown-Office, without moving the Judges in it, and obtaining a Judge's Hand to it, and a Warrant from the Master of the Crown-Office. For the granting of a Certiorari is the Act of the Court, and is to be granted or denied, as they shall see Cause, and it is not a Matter of Course to grant it.

Certiorari to remove an Indictment ought not to be made by any Clerk of the Crown-Office, without a Judge's Hand and Warrant from the Master.

A Certiorari goes every Day to remove Convictions, of which a Writ of Error doth not lie, because that is the Party's only Remedy. Mod. Case 17.

It lies to remove Convictions.

Where a Man takes out a Certiorari to remove an Indictment, and will not use it till after Conviction or the Jury sworn, he loses the Benefit of it. Mod. Case 61, 62.

Where the Benefit of a Certiorari is lost.

A Certiorari lies of Course to certify Diminution in a Writ of Error: But in case an Issue upon the Errors assigned is joined, and all the whole Matter enter'd upon Record, and the Record is made a Concilium, if it shall appear to the Court that there is a Diminution in the Proceedings, fit to be certified, they do grant a Rule for a Certiorari to certify the same, without which Rule the Writ cannot be issued out.

A Certiorari to certify Diminution.

The Court will grant a new Certiorari to affirm, not to reverse a Judgment. Hill. 6 W. B. R. Cro. Jac. 369. pl. 2.

Where it cannot be issued out without a Rule of Court.

The Court will not grant a Certiorari to reverse a Judgment.

Where upon Diminution alledged the Plaintiff in the Errors procures a wrong Bill to be certified, and the Defendant in the Errors afterwards prays another Certiorari, and afterwards upon that procures the true Bill to be certified, the Court will reject the first Certificate, and allow the second. Cro. Car. 91. pl. 14.

Where a false Bill and true Bill are certified, the Court will reject the false, and allow the true.

By an Act made 5 & 6 W. & M. cap. 11. Entituled, An Act to prevent Delays of Proceedings at the Quarter-Sessions of the Peace, which was temporary; but by an Act made 8 & 9 W. cap. 33. it is made perpetual, it is enacted, That in Term-time no Writ of Certiorari, at the Prosecution of any

Of Certiorari granted by the Statute of 5 & 6 W. & M. cap. 11. where by the Court, and where out of the Court, and how to be sued out.

Person

Person indicted, be granted or directed out of the Court of King's Bench, to remove any Indictment, or Presentment of Trespass or Misdemeanor, before Trial had, from before the Justices in the Courts of General or Quarter-Sessions, unless the same be granted upon Motion made for it before the Judges of the said Court, sitting in open Court, and that all the Parties indicted, prosecuting such *Certiorari* before the

To find Security to prosecute.

Allowance thereof, shall find sufficient Manucaptors, who shall enter into a Recognizance before one of the Justices of the Peace in the County in 20 l. with Condition, at the Return thereof, to appear and plead to the said Indictment or Presentment in the King's Bench: And at his own Costs and Charges, to procure the Issue that shall be joined upon the said Indictment or Presentment, or any Plea relating thereto, to be tried at the next Assizes for the County where the same was found, if not in *London, Westminster,*

To try it.

or *Middlesex*: And if in the said Cities or County, then to procure it to be tried the next Term, after such *Certiorari* shall be granted; or the Sitting after the said Term, if the Court of King's Bench shall not appoint any other Time for the Trial thereof: And if any other Time shall be appointed, then at such other Time; and to give due Notice of such Trial to the Prosecutor, or his Clerk in Court; which Recognizance shall be certified into the King's Bench, with the *Certiorari* and Indictment; and the Name of the Prosecutor (if he be the Party grieved) or some publick Officer, to be indorsed on the Back of the said Indictment: And if such Defendant shall not, before the Allowance thereof, procure such Manucaptors to be bound in a Recognizance as aforesaid, the Justices of the Peace may proceed to Trial, notwithstanding the *Certiorari*.

Where Costs to be given, if the Court shall see Cause.

That if the Defendant prosecuting of such *Certiorari* be convicted, the Court of King's Bench shall give reasonable Costs to the Prosecutor of the Indictment, if he be the Party grieved; or a Justice of the Peace, Mayor, &c.

What Remedy for the Costs.

That the Prosecutor, within ten Days after Demand, shall have an Attachment for his Costs, and the Recognizance shall not be discharged till the Costs paid.

How to be granted in Vacation-time.

That in Vacation-time a *Certiorari* may be granted by any of the Judges of the King's Bench, and Security shall be found before the Allowance thereof.

Not to extend to Indictments for Repair of Highways.

A *Proviso* as to Indictments for not repairing of Ways, Causeways, Pavements or Bridges.

Another Statute 8 & 9 W. cap. 32. for prosecuting a *Certiorari* to remove Indictments.

By an Act made 8 & 9 W. cap. 32. it is enacted, That the Party prosecuting a *Certiorari* to remove an Indictment from the General or Quarter-Sessions, may find two Manucaptors, who shall enter into a Recognizance before any one of the Justices of the Court of King's Bench, in the same Sum, and under the same Condition, as is required by the said Act: Whereof Mention shall be made on the

Back of the said Writ, under the Hand of the Justice taking the same, which shall supersede and stay all Proceedings upon any Indictment for Removal whereof such *Certiorari* was granted. And also it shall be the Condition of such Recognizance for the Defendant to appear from Day to Day in the said Court of King's Bench, and not to depart, until he shall be discharged by the said Court.

How to prosecute and sue out a *Certiorari* to remove a Conviction, or other Proceedings, upon the Statute of 4 & 5 W. & M. for the more easie Discovery and Conviction of such as shall destroy the Game of the Kingdom. See Title Game.

How to prosecute a *Certiorari* upon the Statute of 4 & 5 W. & M. for destroying of Game.

A *Certiorari* to certifie a Warrant of Attorney, must be directed to the Chief Justice: And to certifie an Original, must be directed to the *Custos Brevium*, and be returned by him; and is not to be directed to his Deputy, or returned by him.

A *Certiorari* upon a Writ of Error to certifie an Original, and Warrant of Attorney, to whom to be directed.

A *Certiorari* lies from the King's Bench to the Cinque-Ports, to certifie an Order made by them for the Relief of the Poor. 2 Lev. 86.

Certiorari to the Cinque-Ports, to certifie an Order for the Relief of the Poor.

Where the Court which awards the *Certiorari*, cannot hold Plea upon the Record it self, there but a Tenor shall be certified; otherwise, if the Record it self should be removed, there would be a Failure of Right afterwards. See Dy. 187. Pl. 4. Danv. 792.

Where only the Tenor, and not the Record it self, is to be removed.

In Debt in B. R. upon a Judgment in Bristol, the Defendant pleaded *Nul tiel Record*, and a *Certiorari* issued from B. R. to certifie it, and it was certified under the Seal of the Court of Bristol. Cro. El. 821. And said, that the Course was so, and that it needed not to come in under the Great Seal. But upon an Action of Debt brought in an inferior Court, upon a Judgment in the King's Bench, there, upon *Nul tiel Record* pleaded, the Court of Chancery will grant a *Certiorari* to the Court of King's Bench, to certifie the Record into Chancery, and, when it is there, send it into the Inferior Court by *Mittimus*.

Where a *Certiorari* granted out of B. R. to certifie a Judgment upon *Nul tiel Record*:

And where out of Chancery for it.

Challenge.

See § Default.
§ Jury.

Challenges to the Array and Poll, what.

Challenges made to Jurors are either to the Array, or to the Poll. Challenge to the Array is when Exception is taken to the whole Number: Challenge to the Poll is when Exception is taken to any one or more, as not indifferent.

When the King must shew Cause of his Challenge.

In an Information, the Counsel for the King challenged some of the Jurors, and the Court held that by the Statute of 33 E. 1. the King ought to shew Cause of his Challenge, but not before all the Jurors of the Pannel are called over; for if there be enough besides, no Cause shall be shewn of the Challenge. *Raym.* 473, 474.

No Challenge to be allowed contrary to the Record.

That no Challenge ought to be allowed contrary to the Record it self, where both Coroners were mentioned to have returned the Pannel, tho' in truth but one did return the same. *Ibid.* 485.

Challenge of Citizens for want of Freehold, not allowed.

The Challenge of the Polls of Citizens for want of Freehold within the City not allowed in an Information; for if a Pannel in a Corporation must have Freehold Jurors, they must likewise have six Hundredors, which cannot be in any Corporation in England. *Ibid.* 485, 486.

Venire facias to be awarded of the Body of the County per 4 & 5 Annæ.

Note, That by the late Statute of 4 & 5 Anne Regina, For Amendment of the Law, it is enacted, (to prevent the frequent Delays that happen in Trials, by reason of the Challenges to the Arrays of Pannels of Jurors, and to the Polls for default of Hundredors,) That every *Venire facias*, for the Trial of any Issue, in any Action or Suit in any of her Majesty's Courts of Record at Westminster, shall be awarded of the Body of the proper County, where such Issue is triable.

What is a good Cause of Challenge in Waste.

In Waste, it is said to be a good Cause of Challenge of the Jurors, that six of them at the least have not viewed the Place. 2 Saund. 255.

What the Court may do when the View of a Messuage is necessary.

See the late Act For Amendment of the Law, what the Court may do, when View of a Messuage, &c. shall be necessary, and how the View shall be return'd, &c.

Challenge.

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If the Court award a *Venire* to the Officers of a wrong Place, it is no Cause of Challenge to the Array. 2 *Saund.* 257, 258.

Venire awarded to wrong Officers, no Cause of Challenge to the Array.

It is said, that if a Corporation bring an Action, 'tis a principal Challenge to a Juror, that he is of Affinity to any Member of the said Corporation. 1 *Saund.* 344.

In Action brought by a Corporation, 'tis a principal Challenge that a Juror is a-kin to a Member of the Corporation.

It is not a sufficient Cause to challenge a Juror, because he had delivered his Opinion touching the Title of the Land in Question. *Pasch.* 23 *Car. B. R.* *Qu. tamen*; For it seems he is not indifferent; yet his Opinion may be altered upon the hearing of the Evidence, whereby he may be better informed of the Matter of Fact than he was before.

Juror giving his Opinion touching the Title of the Lands in Question, no Cause of Challenge.

Upon a Trial at the Bar betwixt *Harison* and *Ley*, *Pasch.* 1657. *B. S.* a Juror was challenged for the Plaintiff, and the Defendant's Counsel consented *que soit treit*, and after the Plaintiff would have waved his Challenge, and it was questioned whether he might do it, though it was before all the rest of the Jurors were called upon the Pannel; but at length it was permitted, it not being much insisted upon; yet in the Case of *Arnold* and *Bell* the same Term, it was said, it could not be done, except both Parties consent unto it.

Juror was challenged for the Plaintiff; and Defendant's Counsel consented he should be withdrawn. But nevertheless admitted to wave his Challenge.

If one takes a principal Challenge against a Juror, he cannot afterwards challenge that Juror for favour, and wave his former Challenge. *Pasch.* 23 *Car. B. R.* For he shall not wave a greater Challenge to take a less.

After a principal Challenge the same Juror cannot be challenged for Favour.

If the Defendant do not appear at the Trial when he is called, he loseth his Challenge to the Jurors, although he do afterwards appear. *Mich.* 23 *Car. B. R.* For though he appear not, the Jury is to be called and sworn to try the Issue, and therefore if he appear not at first, it will be afterwards too late after the Default recorded, to take his Challenge.

If Defendant appear not when called, he loses his Challenge to the Jurors, tho' he do appear afterwards.

If one challenge a Juror, and do not make his Challenge good, and afterwards the Jury is adjourned; he shall not challenge the Juror again at another Day, except it be for some Matter which is happened since the Adjournment. *Mich.* 23 *Car. B. R.* For a Juror can be but once challenged.

Challenge against a Juror not made good, and then the Jury is adjourn'd: He shall not be challenged again for the same Matter.

If one challenge a Juror, he cannot (afterwards) have him to be sworn, if the Secondary have entred the Challenge. *Pasch.* 24 *Car. B. R.*

A Juror once challenged cannot afterwards be sworn, if the Challenge be entred.

Qu. Whether he may have him sworn if the Challenge be not entred? It seems he may wave his Challenge and have him sworn, for his Challenge is not upon Record.

It

That a Juror was in a former Trial for the same Land, a good Challenge.

It is a good Challenge against a Juror, to say that he was a Juror in a former Trial for the same Land in Question, and upon the same Title, though the Trial was between other Parties. *Mich. 24 Car. B. R.* For it is probable he will maintain his former Verdict, though the Evidence be different.

Challenge to the Array must be read in French by the Counsel, and then in Latin by the Secondary.

When the Array (that is, the whole Jury) is challenged, the Counsel of the Party that makes the Challenge, must read his Challenge in French; and after he hath so read it, it is to be delivered to the Secondary, who is to read it in Latin. 6. Nov. 1650. B. S. Which was then done in a Challenge for want of Hundredors.

The Poll may be challenged after Challenge to the Array.

A Challenge may be made to the Poll after it is made to the Array.

When the Foreman is sworn the Array cannot be challenged.

After the Foreman of the Jury is sworn, the Array cannot be challenged, 6. Nov. 1650. B. S. For then it is too late; for to challenge the Array is to challenge the whole Jury, which cannot be done after one of them is sworn.

Challenge for Favour, no principal Challenge.

A Challenge to a Jury for Favour is not accounted to be a principal Challenge. For Favour is an uncertain Continuance, and not to be relied on.

How a Challenge for Favour must be tried.

If some of the Jury be challenged for Favour, they shall be tried by the rest of the Jury their Companions, upon their Oaths, whether they be indifferent, to try the matter in Question, or not? without going from the Bar, when they have heard all the Evidence that is given against them by the Counsel of the Party that takes the Challenge, 1655. B. S.

Juror withdrawn, because return'd by a wrong Name.

In a Case tried at the Bar between the Earl of Leicester and the Lady Anne Holborne, a Juror was challenged, because he was returned by the Name of *Matthem*, whereas (in truth) his Name was *Mark*, although he was (also) called *Matthem*, as he affirmed, being examined upon a *voire dire*, to say what his Name was; and upon this Challenge the Juror was withdrawn, and the Jury could not be taken for want of him, but a *Tales* was granted.

That the Juror was a Supernumerary in a former Jury for the same Parties, no Cause of Challenge.

It is neither a principal Challenge, nor a Challenge for Favour, to say that the Juror challenged, was a supernumerary Juror in a former Jury returned for the same Parties, in a Cause betwixt them, and received Money for his Charges of the

Party for whom the Verdict passed; (by *Glyn* Chief Justice) because he was not sworn to try the Issue, and so no Jury-man, but as a meer Stranger.

When to challenge the Jurors.

When the Jury appear at a Trial, before the Secondary calls them particularly by Name upon the Pannel to be sworn, he bids the Plaintiff and Defendant to attend their Challenges, viz. *Gardes vostres Challenges*; and

Challenge.

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and then he goes on and swears them: And it is too late to challenge them when they are sworn.

It is a good Challenge, where a Peer is a Party, to say, That there is no Knight returned of the Jury. 1 Plowd. 117. A.

It is a good Challenge for a Peer to say, That there is no Knight returned upon the Jury.

Champerty.

See Maintenance.

Champertors are those that maintain Pleas and Suits; or cause them to be moved, either by their own Procurement, or by others; and sue them at their proper Costs, to have Part of the Land in Controversy; or Part of the Gains. 33 E. 1. Stat. 3.

It is provided, That all Persons, who shall be convicted of Champerty, shall have three Years Imprisonment, and be fined at the King's Pleasure.

Champerty, what.

33 E. 1. Stat. 3.

Part of the Gains.

The Punishment of Champerty by the Statute 33 E. 1. Stat. 3.

Charge.

Charge is by granting of a Rent out of Land, or else to charge it with some Matter, which it shall be liable and subject to.

It is a Maxim in Law, That all Fee-simple Lands may be charged one Way or other. Litt. Sect. 648.

Where a Charge made by Tenant in Tail, in Preservation or Support of the Estate Tail, shall bind the Heir. Cro. Jac. 428.

Charge, Quid.

All Fee-simple Lands may be charged.

What Charges shall bind an Heir in Tail.

Charitable

3 X

and then he goes on and swears them: And it is too late to challenge

It is a good Challenge, where a Peer is a Party, for a Peer to say, I have no Knight to fight upon the day.

Charitable Uses.

See Corporations.

Who may give Lands to Charitable Uses.

And for what Uses.

How to be settled.

A Man may at this Day give Lands, Tenements and Hereditaments, to any Person and his Heirs, for the finding of any Preacher, Maintenance of a School, Relief of maimed Soldiers, Sustainance of the Poor, Reparation of Churches, High-Ways, Bridges; to make a Stock for poor Labourers in Husbandry, and poor Apprentices; Marriage of poor Virgins, or any such Charitable Use. But it is convenient, upon any Feoffment, to reserve to the Feoffor, and his Heirs, a small Rent, or to express a small Sum, or any such Consideration, for the matters aforesaid. 1 Rep. 260.

A Devise to a Corporation to Charitable Uses, is good.

Stat. 43 Eliz. cap. 4.

7 & 8 W. 3. cap. 37.

The Charitable Use Act.

43 Eliz. cap. 4.

Lands devised to Charitable Uses, the Rents are encreased.

poor People, which amounted to 35 l. and which was then the Annual Profits of the Land. Afterwards the Land came to be 100 l. per Annum: And it was adjudged, That the Annual Profits shall go

The Trustees shall not have the Overplus.

the Devisees shall have nothing of it. 8 Rep. 130. b. 13 i. a.

No Bill of Review lies after a Decree of the Commissioners confirmed in Chancery.

Where a Feme Covert may dispose of her own Estate to Charity.

An intended Devise makes a good charitable Use.

Devisees to Corporations to Charitable Uses, are good, by the Statute 42 Eliz. cap. 4. under the Words *Limited and appointed*. Hob. 136. Also aliening to Colleges and Schools, with the King's Licence. 7 & 8 W. 3. cap. 37.

See the Act made 43d. El. cap. 4. entitled *An Act to redress the Misemployment of Lands, Goods and Stocks of Money heretofore given to certain charitable Uses*.

Lands of 35 l. per Annum devised to Trustees and their Heirs, for so much for a Preacher, so much for an Usher, and so much apiece to Four poor People, for the Encrease of their Salary, and Maintenance of a great Number of Poor: And that the Devisees shall have nothing of it. 8 Rep. 130. b. 13 i. a.

Where a Decree is made by Commissioners of charitable Uses, and Exceptions put against it in Chancery, and confirmed in Part, and altered in Part, is conclusive, and no Bill of Review lies. Cro. Co. 40. pl. 2.

Altho' the Will of a Feme Covert be void in Law, yet it serves for a Declaration by the 43 El. so that if there be Assets of her own Estate the Charity shall be performed. Moore fo. 823, Case 1111.

An intended Devise is a Limitation or Appointment of a charitable Use. Moor Case 1251.

Chafe, See Forest.

Chattels.

Chattels

See Term for Years.

The Word Chattels, Catalla, comes from the Normans; for in the 87th Chapter of The Grand Customary we find that all moveable Goods with them were called Chattels; the contrary of which is Fief. But as it is used in our Common Law, it comprehends all Goods moveable and immoveable, but such as are in the Nature of Freehold, or Parcel thereof. See Staundf. Prerog. cap. 16, and 1 Eliz. cap. 2. But Kitchen in his Chapter Catalla, fol. 32, says, That ready Money is not accounted Goods nor Chattels; nor Dawks nor Boulds: The Reason he gives for Dawks and Boulds is, because they are *Res in natura*. But why Money is not, tho' he set not down the Cause, yet it may be gather'd to be, for that Money of it self is not of Worth, but as by Consent of Men for their easier Traffick, or Permutation of Things necessary for Life, it is reckon'd a Thing whose Value consists rather in Imagination than Deed.

Chattels, what they are.

Chattels are either real or personal; Personal may be called in two Respects; one because they belong immediately to the Person; as a Bow, a Horse, &c. The other, for that being any way with-held injuriously from us, we have no Means to recover them but by personal Action. Chattels real are such, as either do not appertain to the Person, but to some other Thing by way of Dependency; as a Box with Charters of Land, the Body of a Ward; Apples upon a Tree; or a Tree it self growing on the Ground; (Crompt. Just. fol. 73. b.) or else such as are necessary, issuing out of some immoveable Thing to a Person; as a Lease or Rent for Term of Years: And also to hold at Will, is a Chattel: *Termes de la Ley, verbo, Chattels.*

Chattels are either real or personal; and why so called.

If a Furnace be fixed in *media domus*, it is but a Chattel, and removeable; but otherwise if it be fixted to the Walls. *Cro. El. 374. pl. 24.*

Where a Furnace is a Chattel, and where not.

Chimins, See Ways.

Chose

Chose in Action.

Chose in Action, what.

Chose in Action is when a Man may bring an Action for some Duty; as Debt upon Bond; or for Rent; or Action of Covenant; or Treasures for Goods taken away; or such like: And because they are Things whereof a Man is not possessed, but is put to his Action for the Recovery of them, they

And why so called.

are called Choses in Action.

It cannot be transferred nor devised: But an Interest may.

A Chose in Action cannot be transferred over, nor devised: Yet a Contract, which arises from an Interest in Land, or which is an Interest, may be transferred over.

The King may grant a Chose in Action.

The King's Grant of a Chose in Action, good. *Cro. Jac. 170, 180. See Title King, and Littleton's Rep. 87.*

A Chose in Action is not devisable.

A Chose in Action is not devisable. *Cro. Jac. 378, pl. 5.*

The Administrator of the Wife, and not the Husband, shall have the Chose in Action.

The Administrator of the Wife, and not the Husband, shall have the Chose in Action: As where a Bond had been made to the Use of the Wife; or a Term assign'd over to the Use of the Wife. *Poph. 106.*

How Choses in Action are assignable in Equity.

Both Choses in Action are assignable in Equity. See *Chanc. Rep. 169, 170.*

A Chose in Action cannot be a Satisfaction, as one Bond cannot be pleaded to be given in Satisfaction for another. *Litt. Rep. 58.*

Church and Church-Yard,

Donative.
See Parson.

Whose is the Church, and Church-Yard.

The Church and Church-yard are in Law the Soil and Freehold of the Parson. *Hob. 69.* and yet the Ordinary hath the Authority of Seating therein. *Clergy-Man's Law, 391.*

Church and Church-yard.

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If the King founds a Church or Chapel, he may exempt it from the Ordinary's Jurisdiction, and the Lord Chancellor or Keeper shall visit it. *Godolph. 201.*

Where the King founds a Church, who to visit.

If the King by Patent licenses a common Person to found a Church or Chapel, exempt from the Ordinary's Jurisdiction, and consists all in Temporalities, the Founder, and not the Ordinary, shall visit it; and the Chaplain shall be deprived by the Founder and his Heirs, and not by the Bishop. *Godolph. 202.* And where the Bishop meddles, the Founder or his Heirs may have a Prohibition. *Fitz. Natura Brevium. 42.*

Where a common Person by the King's License, who to visit.

Who shall deprive the Chaplain.

What Remedy against the Bishop.

Ejectment lies for a Church.

An Ejectment lies for the Improprator, *pro quadam domo vocat* the Parish-Church of, &c. *Grant's Case. 1 Anna.*

Who are to repair the Church and Church-yard.

The Punishment for Quarrelling or Scolding in the Church yard. 5 & 6. E. 6. cap. 4.

The Parishioners are to repair the Body of the Church, and fence the Church-yard. *Clergy-Mens Law. 301.*

How striking in the Church or Church-yard shall be punished.

How it is for striking with a Weapon, or drawing of a Weapon to strike in a Church or Church-yard.

What shall become of the Trees in the Church-yard.

35 E. 1. Sect. 2.

One who hath Lands in the Parish, tho' no Inhabitant, shall pay to the Repairs of the Church.

If any Person shall quarrel, chide or brawl in any Church or Church-yard, if he be a lay Man the Ordinary may suspend him *ab ingressu Ecclesie*, and if a Clerk from the Ministration of his Office for so long as he shall think fit.

If any Person shall smite or lay violent Hands upon another in the Church or Church-yard, he shall be deem'd *ipso facto* excommunicate. *Sect. 2.*

That if any Person shall maliciously strike another in the Church or Church-yard with a Weapon, or shall draw a Weapon there, with an Intent to strike there, upon Conviction at the Assises or Sessions, he shall have one of his Ears cut off, and to be and stand *ipso facto* excommunicated. *Sect. 3.*

By a Statute made 35 E 1. entitled, *Ne Rector prosterneat Arbores in Cæmeterio*, it is said, We do Prohibit the Parsons of the Church, that they do not presume to fell down the Trees growing in the Church-yard unadvisedly, but when the Chancel wants necessary Reparations, neither shall they be converted to any other Use, unless the Body of the Church needeth Repair; and then it is commended to the Parson to let the Parishioners have them for the Repairs of the Body of the Church. See 11 Co. Rep. 49. b.

One who hath Lands in a Village but doth not inhabit there, shall be contributory to the Repairs of that Parish-Church, and a Prohibition will not lie to excuse him. *Cr. El. 843. pl. 24. and 659. pl. 5.*

Who hath the Disposal of the Pews in the Church.

How it is by Prescription.

Case lies for a Seat, or upper Part of a Seat, by Prescription.

for it lies at the Common Law. *Noy* 129.

What makes a peculiar Interest in an Isle of a Church.

Can't be displac'd by any one.

But constant sitting there without Repairing will not make a Title.

Where the Parish Repairs the Isle, the Ordinary appoints who shall sit there.

it is doubted whether such a Prescription in *Navi Ecclesie* be good. *5 Mod.* 436.

The Church becomes void *sans* Deprivation for not reading of the Articles.

13 Eliz. cap. 12.

To prescribe for a Seat to a Capital Messuage, without saying *ancient Messuage*, is good.

ancient Messuage, and might have such a Privilege. *Cro. Jac.* 605, 606.

All Assurance of Church-Lands to the King, void.

1 Jac. 1 Car. 3.

The Disposition of Seats in the Church belongs to the Ordinary, unless a Prescription to the contrary.

No Person shall break any superstitious Pictures in the Church-Windows, but the Ordinary.

his Good Behaviour. *Cro. Jac.* 366.

The Disposal of the Pews in the Body, or an Isle or Chapel adjoining to the Body, and the Reparations of them, belong to the Ordinary. *Hob.* 89.

No Man can challenge a Seat in the Church, without a special Reason, as prescribing to repair. *Hob.* 69.

A Man may not only claim a Seat in the Church by Prescription, as peculiar to him, but the upper Part of a Seat; and an Action upon the Case

If an Inhabitant and his Ancestors have used Time, &c. to repair an Isle of a Church, and sit there with his Family, and bury there, this makes it peculiar to his House, and he can't be displac'd by the Parson, Church-Warden or Ordinary; but the constant sitting and burying there without using to repair it, doth not gain any peculiar Property therein. *Cro. Jac.* 366.

If the Isle had been used to be repaired at the Charge of all the Parish, the Ordinary may appoint whom he pleases to sit there, notwithstanding any Usage to the contrary. *Cro. Jac.* 366. But

it is doubted whether such a Prescription in *Navi Ecclesie* be good.

The Church becomes void presently by not Reading of the 39 Articles, and there needs not any Deprivation; otherwise the Statute would be avoided at the Ordinary's Pleasure, if he would not deprive.

Where a Man says that he is seized in Fee of a Capital Messuage, and prescribes for a Part of the Chancel, as appertaining thereto, and that they had repaired it &c. it is included that it is an

All Assurances to be made to the King by any Archbishop, or Bishop, of their Church-Lands, shall be void.

The Placing and Displacing of People in the Seats of the Church belongs to the Ordinary unless there be a Prescription by one who hath a Freehold. *5 Mod.* 436.

It is not lawful for any one to break or deface any superstitious Pictures in any Window, but the Ordinary only; and if any one do it without the Ordinary's Licence, he shall be bound to

Church and Church-yard.

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Coats of Arms plac'd in any Window, or Monument in Church, or Church-yard, can't be beaten down or defaced by the Parson, Ordinary, Church-Wardens, or any other; and if they be, the Heir by Descent interested in the Coat, may upon the Case. *Cro. Jac. 367.*

Neither the Ordinary nor the Church-Wardens, can grant License of burying to any within the Church, but only the Parson, because the Soil and Freehold of the Church is only in him and none other.

That where any one is assaulted or beaten in a Church or Church-yard, it is not lawful for him to return or give back any Blows in his own Defence, as he may elsewhere in other Places, *vide Stat. 5. E. 6 Ca. 4. Cro. Jac. 366. pl. 7, 367.*

Coats of Arms or Monuments in a Church or Church-yard, not to be beaten down, &c.

have an Action

None but the Parson can grant a License to bury in the Church, and why.

A Man must bear an Assault in the Church-yard patiently, and not return it, as he may elsewhere. *5. & 6. E. 6. rap. 4.*

Church-Wardens.

See Wardens of the Church.

Church-Wardens are Officers chosen yearly by the Minister and Parishioners, according to the Custom of every several Place, to see to and take Care of the Church and Church-yard. Terms of the Law, 68. a.

A Church-Warden, how chosen, and his Duty.

Church-Warden is an Officer of whom the Common Law takes Notice.

Mich. 22 Car. 1. B. R.

A Church-Warden is a temporal Officer, and a Corporation to bring Actions.

And when chosen by the Parish must be sworn by the Arch-deacon.

The Ecclesiastical Court can't try the Custom of choosing a Church-Warden.

Warden,

A Church-Warden is an Officer, tho' he doth not take an Oath: For the Oath was only enjoin'd him by the Bishop of the Diocese, And he is an Officer whereof the Common Law takes Notice; and was so before such an Oath was imposed upon him. *Mich. 22 Car. 1. B. R.*

A Church-Warden is a temporal Officer; nay, he is a Corporation, and Actions are brought in his Name, and likewise against him by his Successor to account; And where there is a Custom for a Parish to choose him, it is the Duty of the Arch-deacon to swear him. *5 Mod. 326.*

Where a Parson claims to name one Church-Warden by the Canons, and the Parishioners claim a Custom to choose them both, the Court will grant a Mandamus to swear the Parish's Church-

Warden, because the Ecclesiastical Court can't try the Custom of choosing the Church-Wardens. *Raym.* 440.

How to prescribe for a Seat in a Church or in an Isle.

One cannot prescribe for a Seat in a Church, because they are disposible by the Parson and Church-Wardens; but they may prescribe for a Seat in an Isle of the Church, because it shall be presumed that his Ancestor, or those under whom he claims, built the Isle. *Moore Case* 1232.

Church-Wardens cannot prescribe to have Lands.

Church-Wardens cannot prescribe to have Lands to them and their Successors, for they are not any Coporation to have Lands, but only for the Goods of the Church. *March* 66.

Parson and Church-Wardens in London may purchase.

But in London, the Parson and Church-Wardens are a Coporation, and may purchase and demise Lands. *Cro. Jac.* 532.

They cannot give away the Goods of the Church.

A Gift by them of Goods in their Custody, without the Consent of the Vestry, is void. *Rol. Rep. Methold & Win's Case.*

The Organs belong to the Parishioners, not to the Parson.

The Church-Wardens may bring Trespafs for taking of the Organs out of the Church, for they belong to the Parishioners, and not to the Parson. *1 Rol. Rep.* 69.

They may receive Goods for the Benefit of the Church, but can do nothing to its Disadvantage.

Although Church-Wardens have Power to receive Goods for the Benefit of the Church, yet they have no Power to do any Thing to its Disadvantage. *Yelv.* 173.

Parishioners may dispose of the Goods of the Church.

They may, by the Agreement of the Parishioners, take a ruinous Bell and new-found it; for the Parishioners are a Coporation for the Disposal of such Personal Things as belong to the Church. *1 Roll. Abr.* 121. Pl. 9.

How old and new Church-Wardens must bring their Actions.

Church-Wardens may bring Trespafs for a Bell taken out of the Church in the Time of their Predecessors; but they must lay it *Ad Dampnum Parochianorum*. *Cro. El.* 145, 179. But for Goods taken in their own Time, they may lay it *Ad Dampnum ipsorum*, or *Ad Dampnum Parochianorum*. *Ibid.*

Where *Bona Ecclesie*, and where *Parochianorum*.

If they bring Account against their Predecessor for a Bell, &c. it must not be laid to be *Bona Ecclesie*, but *Bona Parochianorum*. *1 Mod.* 65.

Where the new, and not the old Church-Wardens, must bring their Action.

Church-Wardens may bring Trespafs for a Bell taken out of the Church in the Time of their Predecessors; but their Predecessors can have no Action: Because their Time is past. *Cro. El.* 145.

One Church-Warden cannot release Costs; and why.

Two Church-Wardens recover Costs; one of them cannot release, because they have nothing but to the Use of the Parish. *Cro. Jac.* 235.

They may pull off a Hat in the Church in the Time of Divine Service.

Church-Wardens may take off the Hat from a Person who sits irreverently with it upon his Head in the Church in the Time of Divine Service, and refuses to pull it off. *1 Lev.* 196.

Cinque-Ports.

See Certiorari.

All the privileged Ports were but three, viz. Dover, Sandwich, and Romney; but Hastings and Hythe were added by the Conqueror. 4 Inst. 222. To which, Winchester, Rye, and other Towns, re adjoined. 2 Inst. 556. 4 Inst. 222.

Which are the Cinque-Ports.

They are by Charter exempted to be drawn in Plea within the County in general. Yelv. 13.

Not to be drawn in Plea in the County.

They hold Plea of Freehold by Plaint. 1 Sid. 166.

They hold Plea of Freehold.

The Jurisdiction of the Cinque-Ports is general, as well to personal as real and mixt Actions. 4 Inst. 224.

And also of personal and mixt Actions.

The Mayor and Jurats of the several Ports have Power to hold Plea; and no Writ of Error lies upon their Judgments in B. R. but they are examinable by Bill, in the Nature of a Writ of Error, *coram Domino Custode seu Guardiano quinque Portuum apud Curiam suam.* 4 Inst. 224.

Who hold Pleas there.

No Writ of Error lies.

How Errors are there examinable.

Upon a Judgment in any of the King's Courts, and the Defendant hath no Lands or Goods but in the Ports; the Plaintiff may get the Record certified into the Chancery, and from thence sent by *Mittimus* to the Lord Warden to make Execution. 4 Inst. 223. 1 And. 28. 3 Leon. 3.

How Execution shall be upon a Judgment in the King's Courts.

The Constable or Keeper of Dover Castle is Warden of the Cinque-Ports; and the Writs directed to him are, *Rex, &c. Constabularius Castri nostri de Dover & Custodi quinque Portuum.* 2 Inst. 556.

How Writs are directed to the Ports.

A *Quo Minus* lies to the Cinque-Ports. Hard. 475. Cro. Eliz. 911.

A *Quo Minus* lies to them.

The Cinque-Ports cannot award Process of Outlawry. Cro. El. 910.

They cannot award Process of Outlawry.

One being imprison'd in Dover by the Lord Warden of the Cinque-Ports, an *Habeas Corpus* was granted to bring up his Body; but the Lord Warden would not allow it; whereupon an *Alias Habeas Corpus* with a great Penalty was awarded, and the Chief Justice said, that the Privilege of the

An *Alias Habeas Corpus* with a great Penalty awarded to the Warden of the Cinque-Ports.

What are the Privileges of the Ports.

Cinque-Ports.

The King must have an Account of the Imprisonment of his Subjects.

What Jurisdiction they have in Civil Causes, cannot extend to what they do as Justices of Peace.

A *Certiorari* awarded to the Mayor and Justices of *Dover* to remove an Indictment, and not to the Lord Warden.

by Virtue of their Commissions, not their ancient Charters. *Cro. Car. 253.*

Ports that the King's Writs run not there, is to be intended between Party and Party, but not against the King, who is to have an Account why any of his Subjects are imprisoned. *Cro. Jac. 543. pl. 3.*

Though in Civil Pleas the Cinque-Ports have a Jurisdiction, that *brev. Dom. Regis non currit* there, because their Court is time out of Mind, and confirm'd by Parliament; yet it cannot extend to what they do as Justices of the Peace, which began within time of Memory. *Cro. Car. 252. pl. 3. 253.*

A *Certiorari* was awarded to the Mayor and Justices of *Dover* to remove an Indictment of Felony, (and not directed to the Warden) for the Indictment was before them as Justices of the Peace by Virtue of their Commissions, not their ancient Charters. *Cro. Car. 253.*

Claim.

Claim, what.

Claim is a Challenge by any Man of the Property or Ownership of a Thing which he hath not in his Possession, but is wrongfully detained from him.

See Stat. 4 & 5 Anne.

See the Statute of 4 & 5 Anne, as to this Matter, in Title Felony, *Fol.* and how Claim is to be made.

Where a Claim entred at the foot of the Fine will not avoid the Statute 4 H. 7. cap. 24.

If a Disseisor levies a Fine, and the Disseisee enters his Claim in the Record of the Foot of that Fine, that is not any such Claim as shall avoid the Statute of 4 H. 7. cap. 24. *Leon. Case 73.*

Clergy.

See Felon and Felony.

Clergy is defined to be an ancient Liberty of the Church, confirmed by divers Acts of Parliament. And it is where the Prisoner is arraigned of Felony before a Temporal Judge, and is condicted, and prayeth his Clergy: Then the Judge delivers him to the Ordinary, to try if he can read as a Clerk or no.

One outlawed for Felony was brought to the Bar, and had his Clergy without Purgation. *Lib. Intr. 120. Mich. 17 H. 7. Rot. inter Placita Regis.*

The Benefit of the Clergy shall be allowed but once, unless it be to a Person in Orders.

A Man outlawed for Felony had his Clergy without Purgation.

The Benefit of the Clergy to be allowed but once. *4 H. 7. cap. 13.*

How the Trial of a Clerk or not, was:

In old Time few Persons were bred to Learning, but those who were actually in Orders, or educated for that Purpose: And therefore the Trial of a Clerk or no was by *reading*, of which the Court was Judge, and not the Ordinary: For if he could not read, the Court would not deliver him as a Clerk, though the Ordinary claimed him: And if he did read, he should be allowed as a Clerk, though the Ordinary refused him. And Reading being the Way of Trial, whether Clerk or not, without farther Examination into any other Qualification, all Persons that so approved themselves by Reading were allowed to be Clerks. *Kel. Rep. 100, 101.*

Before the Statute of 4 H. 8. cap. 2. Clergy was allowed in Murder; but now by that Statute it is taken away in Murder, and allowed only in Manslaughter.

Before the Statute of 4 H. 8. cap. 2. Clergy was allowed in Murder, now only in Manslaughter.

What Persons shall be debarred and excluded from Clergy, by 10 & 11 W. 3. cap. 23. See Title Burglary.

What Persons shall be excluded from Clergy. See 10 & 11 W. 3. r. 23.

See in Title Felony, where Clergy is taken away in several Cases, by 1 E. 6. cap. 12. sect. 10. to which Act there is an explanatory Act 5 & 6 E. 6. cap. 9. where in sect. 4. That if any Person shall be found guilty of robbing a Dwelling-house, the Owner, his Wife, Children or Servants being in any other Part of the House than that where the Robbery is committed, and whether waking or sleeping, shall not have his Clergy.

Where Clergy is taken away for several Offences. 1 E. 6. r. 12. sect. 10.

Robbing of a Dwelling-House, though no Body put into a Fright.

See

See also the Statute of 5 & 6 E. 6. cap. 10. about this Matter.

See the Statute of 3 & 4 M. & P. cap. 9.

For Punishment of Women convicted of Felony.

4 & 5 M. & P. cap. 24. Sect. 14.

next Session of Parliament: In which Act there is a Clause, *sect. 14.* That if any Woman hath been, or hereafter shall be, convicted of Felony, for which a Man might have the Benefit of Clergy, and upon her Prayer hath it, there shall not be Judgment of Death against her, but she shall be burnt in the Hand. And where she hath once had, or hereafter shall once have, the Benefit of the said Statute, and shall be again convicted of any other Felony, for which a Man might have the Benefit of his Clergy, such Woman shall be, and is hereby totally excluded from having any Benefit or Advantage of the Statute; but shall suffer Pains of Death, as if the said Statute had not been made.

6 & 7 M. cap. 14.

Burning in the Cheek repealed,
5 Anne Sect. 2.

ing in the Hand, to be burnt in the Cheek, is taken away and repealed, which see in Title *Felony*.

Burning in the Hand to be as formerly.

To be committed to hard Labour, to the House of Correction, not less than six Months, nor more than two Years.

The Keeper may correct them.

The Punishment for Escapes.

The Reading as a Clerk taken away.

See also the Statute of 5 & 6 E. 6. cap. 10. entitled, *An Act for the avoiding of Clergy from divers Persons.*

See the Statute of 3 & 4 W. & M. cap. 9. entitled, *An Act to take away Clergy from some Offenders, and to bring others to Punishment. And the Punishment of Women convicted of Felony, where Men have their Clergy.* And as to Conviction for a Felony after Clergy, this Act was but temporary; but 4 & 5 W. & M. c. 24. *sect. 14.* continued it for three Years from the 13th of February 1692, and from thence to the End of the

next Session of Parliament: In which Act there is a Clause, *sect. 14.* That if any Woman hath been, or hereafter shall be, convicted of Felony, for which a Man might have the Benefit of Clergy, and upon her Prayer hath it, there shall not be Judgment of Death against her, but she shall be burnt in the Hand. And where she hath once had, or hereafter shall once have, the Benefit of the said Statute, and shall be again convicted of any other Felony, for which a Man might have the Benefit of his Clergy, such Woman shall be, and is hereby totally excluded from having any Benefit or Advantage of the Statute; but shall suffer Pains of Death, as if the said Statute had not been made.

This Act was temporary, but made perpetual by 6 & 7 W. cap. 14.

By a Statute made in the second Session of Parliament 5 Anne, so much of the Statute of 10 & 11 W. 3. cap. 23., which enacts, That instead of burning in the Hand, to be burnt in the Cheek, is taken away and repealed, which see in Title *Felony*.

And it is further enacted, That in case of Theft or Larceny, burning in the Hand shall be as formerly, and the Judge or Justices before whom such Offender is tried and convicted, may give Judgment, that such Offender be committed to some House of Correction or publick Workhouse within the County, City, Town or Place where convicted, to remain without Bail so long as the Judge or Justices shall award, not less than six Months, nor exceeding two Years, to be kept at hard Labour during all such Time; and the Keeper to give them due Correction in case they refuse or neglect to work as they ought to do.

In case they shall escape, then, when retaken, their Punishment shall be doubled.

Where any Person convicted of such Felony, whereof he formerly should have had the Benefit of his Clergy, as if this Act had not been made, and

Clergy.

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and shall pray to have the Benefit of this Act, he shall not be required to read, but without reading shall be allowed, taken and reputed to be, and punished as a Clerk Convict, and shall be as effectual to him as if he had read as a Clerk.

Praying the Benefit of this Act is in lieu thereof.

Collation.

See Lapse.

Collation of a Benefice signifies properly the bestowing of a Benefice by a Bishop that hath it in his own Gift or Patronage, and differs from Institution in this, viz. Institution into a Benefice is performed by the Bishop upon the Presentation of another who is Patron thereof. Cowell Title Collation.

Collation, what.

There is a great Difference between Collation and Presentation; for a Collation is the giving of the Church to the Parson, and the Presentation is the giving or offering of the Parson to the Church.

The Difference between a Collation and a Presentation.

1 Leon. Case 307.

A Collation gains not the Patronage from the King. Ibid.

Collation gains not the Patronage from the King.

A Collation never gains the Church, but a Usurpation doth. Cro. El. 811. pl. 17.

A Collation gains not the Church, but a Usurpation doth.

Colour.

Colour is a feigned Matter which the Defendant or Tenant useth in his Bar. when an Action of Trespass or an Assize is brought against him, in which he gives the Demandant or Plaintiff a Shew that he hath a good Cause of Action; whereas in truth he hath not, but only a Colour and Face of a Cause: And it is used, to the end that the Determination of the Action should be by the Judges, and not by the Jury; and therefore Colour ought to be Matter of Law, or doubtful to the Lay-Gents.

Colour, what.

What Qualities it
ought to have.

Every Colour ought to have these Qualities following :

1. It ought to be doubtful to the Lay-Gents. As for Instance ; where the Defendant says, That the Plaintiff claims by Colour of a Deed of Feoffment, where nothing passed by the Deed : This Colour is a good Colour, it being a Doubt to the Lay-Gents, whether the Land passeth by this Feoffment without Livery or no. 10 Rep. 88. a. b.

Ought to have Continuance.

2. Colour, as Colour, ought to have Continuance, although it wants Effect. As for Instance ; where the Defendant gives Colour, by Colour of a Deed of Demise to the Plaintiff for the Life of J. S. who before the Trespass was dead : This is not any Colour ; for this doth not continue. But he ought to say, That he claims by Vertue of a Deed of Demise made to him for his Life, where nothing passed by that Deed.

Ought to be such as, if it were effectual, would maintain the Nature of the Action.

The Reason of giving Colour.

Where Colour to be given, and where not.

cause this binds the Matter of the Plea given. *Ibid.* 90. 9^l.

When the Defendant entitles himself by the Plaintiff, no Colour is to be given.

Nor when the Defendant pleads to the Writ, or to the Action of the Writ.

Nor for a Justification for Tithes.

Nor where the Defendants justify as Servants.

Where Colour must be given, and where not.

When the Defendant doth not make a special Title to himself or any other, he ought to give Colour to the Plaintiff ; but when he pleads a general Plea, or that it is his Freehold, it is otherwise. *Cro. Eliz.* 76. pl. 35.

3. It ought to be such Colour, that if it were effectual, would maintain the Nature of the Action ; as in Assize, to give Colour of Freehold, &c. *Dr. Leyfeild's Case*, 10 Rep. 91.

The Reason of giving Colour in Trespass is, for that the Defendant's Plea may not amount to the general Issue : But if a Man justifies his Entry for such a Cause as binds the Plaintiff or his Blood for ever, he shall not give any Colour. But if a Man pleads a Descent in Bar, he must give Colour : Because Possession, and not the Right ; so that when the bars the Plaintiff of his Right, no Colour must be

Also when the Defendant entitles himself by the Plaintiff, no Colour is to be given.

Also when a Man pleads to the Writ, or to the Action of the Writ, no Colour is to be given.

Also he who justifies for Tithes, shall not give Colour ; for although any Person severs them from the nine Parts, yet they belong to the Parson. 10 Rep. 91. a.

Where the Defendants justify as Servants, no Colour ought to be given to the Plaintiff. *Lutw.* 1343. 10 Rep. 91. a. b. 92, &c. 12 E. 4. 16. b. pl. 17.

When the Defendant doth not make a special Title to himself or any other, he ought to give Colour to the Plaintiff ; but when he pleads a general Plea, or that it is his Freehold, it is otherwise. *Cro. Eliz.* 76. pl. 35.

Colour.

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In Trespass for taking and carrying away twenty Loads of Wood, the Defendant says, that J. S. was possessed of them, *ut de bonis propriis*, and that the Plaintiff claiming them by Colour of a Deed after made, took them, and the Defendant retook them: And adjudged, That the Colour given the Plaintiff makes a good Title to him, and confesseth the Interest in him; for Colour ought to be such a Thing, which is a good Colour of Title, and yet is not any Title. *Cro. Jac. 122. pl. 6.*

Colour in Trespass, where not good.

Colour ought to be of such a Thing, which is a good Colour of Title, and yet is not any Title.

Concerning giving Colour in Pleading. See Dr. Leyfeild's Case, 10 Rep. 90, 91: Dyer 112. pl. 48. 249. pl. 71. Keilw. 74. 4. See also *Regula Placitandi*, 72, 73, 74, 75, 264.

Giving Colour in Pleading.

Commendams.

Of the Original and Nature of them, see at large in the Case of Commenda, in Davis's Rep. from 79. to 83. See Latch 31. and 333. and Vaugh from Fol. 18. to Fol. 27.

When the King advances the Incumbent to a greater Dignity, he is the Means to cause the Avoidance of this Benefice; and it is an usual Practice that the King for the most part upon creating of Bishops grants to them to hold their Benefices in *Commendam*, which is good against the Patrons, because the Presentations belonged to him. *Cro. Eliz. 527.*

How Commendams came to be.

By an Ecclesiastical Person's Promotion to a Bishoprick, his Wardenship of an Hospital as well as his Benefices, Prebendaries and other Ecclesiastical Dignities become void in Law, *Pryn's History of Popish Usurpations.*

What happens upon the Promotion to a Bishoprick.

The King by his special Dispensation may prevent their Avoidance, and licence him to retain them. *Ibid.*

The King may grant him a Licence *retinere*.

This Licence or *Commenda retinere* must precede his Consecration as a Bishop. *Ibid.*

This must precede his Consecration.

Commission.

Commission and Commissioners,

By what Commission a Judge of Assize tries a Cause.

The *Distringas Juratores* is not the Commission of the Judge to try the Cause, but it is the Commission of Assize that gives him an Authority to hold Plea of Actions.

The King may appoint a Deputy Escheator to find an Office after the Death of a Nobleman.

ces are but Offices of Enquest, and may be found by special Commission.

The King may appoint a Justice of Assize to go the Circuit alone, tho' by the Statute he is to have an Associate.

Case the King may dispense with the Statute, not being prohibited by the Statute to do it.

Where Commissioners of Sewers were fined and imprisoned.

How the Commissioners must lay their Tax.

The King may by his Commission make one or more Deputy Escheators to find an Office after the Death of a Nobleman, or for some other special Cause. (*Pasch. 24 Car. 1. B. R.*) For such Offices

A Justice of Assize may have a special Commission to ride the Circuit alone: But if his Commission be general, and according to the Statute, he is to have an Associate joined with him in the Commission. (*Trin. 24 Car. 1. B. R.*) For in this

Case the King may dispense with the Statute, not being prohibited by the Statute to do it.

Commissioners of Sewers fined and committed, for committing of a Man to Gaol without Bail, by their Warrant. *Cro. Jac. 336. pl. 5.*

Commissioners of Sewers cannot tax a whole Township, but it ought to be done severally and proportionably to every Inhabitant. *Cro. Jac. 336. pl. 5.*

Commit-

Commitment and Committitur

See Contempt.

Commitment of a Man to Prison is the Act of the Court, and never done without good Cause for it.

Commitment, what.

Every Commitment to the Gaol ought to be made by Warrant under the Hand and Seal of him that commits the Party; and the Cause why the Party is committed, ought to be expressed in the Warrant. (*Pasch. 23 Car. 1. B. R.*) This is the true Way of Commitments made by Justices of the Peace in the Country: But this Court may commit by Rule of Court, and without the Cause in the Commitment.

All Commitments ought to be under Hand and Seal; and the Cause specified in the Warrant. But B. R. may commit by Rule of Court, and without mentioning the Cause.

None shall be committed for a Contempt done to the Court, if the Contempt doth not clearly appear to the Court, either by an Act committed in Court, or by Affidavit filed in Court, or by the Party's (upon his Examination to Interrogatories) being reported to be in Contempt: So tender is the Law of inflicting Punishment upon any without an apparent Cause.

Where there shall be a Commitment for a Contempt.

How the Commitment of Prisoners is to be. See Title Prisoners.

Commitment of Prisoners.

Where a Prisoner is upon an Action committed to the Marshal, a *Committitur* entered in the Marshal's Book in the King's Bench Office is sufficient; but where a Person is committed in Execution, there the *Committitur* must be entered upon the Roll. *1 Sid. 237. pl. 5. 1 Keb. 835. pl. 17.*

How a Prisoner to be upon an Action, and how upon an Execution.

Commitment

Common and Commoner,

Sec Appurtenant and Appendant.
Apportionment.
Distress.
Prescription.

Common, what.

Common is the Right that a Man hath to put his Cattle to Pasture into the Ground that is not his own.

There are four Manners of Commons:

The several Sorts of Commons.

1. Common Appendant.
2. Common Appurtenant.
3. Common in Gross.
4. Common of Vicinage. 8 Rep. 60. a. b.

Common Appendant, what.

Common Appendant hath its Commencement thus, viz. When a Lord hath enfeoffed another with arable Land to hold in Socage; the Feoffee, to maintain the Services of his Lord, hath Common on his Wastes for his necessary Cattle. 4 Rep. 37. viz. Horses and Oxen to plow his Land, and Cows and Sheep to make Dung for it. 37 H. 6. 34.

And why it is.

1. Because he cannot maintain his Cattle without Pasture.
2. Because it is in Favour of Tillage. 4 Rep. 37.

Common not grantable but by Deed.

Grant of a Common not within the Statute of Uses.

Hogs not commonable, and why.

Unruliness in respect of other Beasts. (Pasch. 1650. B. S.) Yet by Consent of the Commoners amongst themselves, it is usual to put Hogs upon Commons and Wastes.

One cannot claim Common Appurtenant for Geese.

A Man cannot claim Common Appurtenant for Geese. Plowd. Com. 161. a.

A Prescription to have *solam & separatam Communiam* in certain Lands, does not exclude the Owner of the Soil to have Pasture or Estovers. *Vaugh.* 251. *Co. Litt.* 122. a.

One may prescribe for Common in a Forest for Sheep in the Fence-Months. 1 *Litm.* 81. 3 *Lev.* 98.

But a Man cannot prescribe for Common in a Forest for Goats. 1 *Litm.* 81.

The Lord of a Manor cannot put in the Cattle of a Stranger. *Idem* 107.

The Lord of the Soil may put in as well Beasts of the Warren as other Cattle. *Idem* 108.

It cannot be created at this Day, nor be claimed by Grant. *Keilw.* 123. b. But must be by Prescription. 5 *Aff.* 19. 26 *H.* 8. 4. And shall not be to an House. 22 *H.* 6. 43. But to arable Land only. 37 *H.* 6. 34. 26 *H.* 8. 4. And may be limited to a certain Number. 17 *E.* 3. 27. 34. b. Note, Where the Number is certain, there they need not to say in their Prescription, for so many Cattle to be Levant and Couchant; but where it is for Cattle *sans Nombre*, there it must be said Levant and Couchant.

Common Appendant cannot be had by Prescription, but by Usage Time out of Mind it may. 2 *Inst.* 477. 1 *Inst.* Sect. 170.

It cannot be for all Manner of Cattle, because Goats, Geese, &c. which are not commonable Cattle, are comprehended under Cattle: But this is Common Appurtenant. 37 *H.* 6. 34. b.

It shall be only of the Tenant's own Cattle, or those only with which he manures, dungs, or tills the Land. 11 *H.* 6. 22. 45 *E.* 3. 26. And those only Levant and Couchant. *Kitch.* 94. *Keilw.* 123. b. 12 *Rep.* 66. But he cannot agist the Cattle of a Stranger. 11 *H.* 6. 22. b. *Br. Common* 47. See *Gateward's Case*, *Rep.* 6. very good Learning, and Directions in the Case of Commons; and 8 *Rep.* 78. b. *Weild's Case*.

So many Cattle as the Land to which the Common belongs can maintain in Winter, shall be said Levant and Couchant. *Noy* 30. See 1 *Ventr.* 54.

And so many Beasts may be said to be Levant and Couchant upon an House, as may be tied there, and are usually to be there kept. See 1 *Ventr.* 54. 2 *Brownl.* 101. per *Vaugh.* 253. To a common Intent, Cattle cannot be Levant, &c. upon an House.

A Man prescribes to have Common Appurtenant to the Manor of B. for all his Beasts Levant and Couchant upon it; he grants this Common to

A This is naught; for he hath this for the Beasts Levant and Couchant, &c.

Prescription to have the sole Commonage does not exclude the Owner of the Soil from Pasture or Estovers.

One may prescribe for Common for Sheep in a Forest in the Fence-Months.

But not for Common in a Forest for Goats.

The Lord of a Manor may not put in a Stranger's Cattle.

The Lord of the Soil may put in Beasts of Warren.

Common Appendant must be by Prescription, and to what.

Only to arable Land.

Where the Number is certain, there they need not to say in their Prescription, for so many Cattle to be Levant and Couchant; but where it is for Cattle *sans Nombre*, there it must be said Levant and Couchant.

Where Levant and Couchant, and where not.

It cannot be had by Prescription, but it may by Usage.

For what Cattle.

For what Cattle, and when Levant and Couchant.

What and how many Cattle may be Levant and Couchant.

Where Common Appurtenant may be granted over, and where not.

Or. But Common Appurtenant for Beasts certain may be granted over.
Cro. Jac. 19. pl. 19.

From Severance of the
 Corn till it is re-sown.

in the Residue. *Yelv. 185. 2 Brownl. 189.*

So in a Meadow, after
 the Hay carried, till
 Candlemas.

For two Years after
 the Corn severed, and
 all the third Year.

Case lies for plowing
 of the Ground where he
 ought to have Common.

dant to his Lands in D. And then he says, that the Defendant plowed
 his Land, by which he was disturbed in his Common. And held that
 the Action well lies. *3 Leon. Case 354. Cro. El. 198.*

May have this Com-
 mon for thirty Cattle in
 one Place, and twenty in
 another.

An Inhabitant in a
 Town claims Common,
 what it is.

Custom for Inhabitants
 to have Common, is void.

Common Appurtenant,
 what.

A Common granted
 within Time of Memory
 shall pass as Common
 Appurtenant, tho' but
 Part of the Land granted.

municabilibus omni tempore anni was granted: And this, tho' granted with-
 in Time of Memory, was held to be Common Appurtenant to the said
 Tenement, and may pass as Common Appurtenant, though but Part
 of the Land be granted. *Cro. Car. 482.*

A Man may release
 Part of his Common.

Common Appendant may be to Common af-
 ter the Corn is severed, till it is re-sown. *F. N. B.*
180. E. And if Part is re-sown, he may common

So it may be to Common in a Meadow, after
 the Hay carried, till *Candlemas* or *Lady Day*, &c.
17 E. 3. 26, 34.

So it may be to common for two Years after
 the Corn cut and carried, until re-sown, and every
 third Year *per tot' Ann. 22 Aff. 42. 1 Saund. 343, 344.*

A Declaration that he is seized of Land in D.
 and by reason thereof he and all those whose
 Estates he hath, had Common of Pasture in E. from
 the Time the Corn is reaped every Year, as Appen-

A Man may have Common Appendant for thir-
 ty Cattle in one Place, and to the same Land
 Common Appendant in another Place for Part of
 his Cattle. *17 E. 3. 34. b.*

A Man claims Common, as an Inhabitant in a
 Town, for all Manner of Cattle; he shall have no
 Common but for those Levant and Couchant. *15*
E. 4. 32. as Common Appendant.

A Custom for Inhabitants of a Town to pre-
 scribe for Common is illegal and void. See the
 Case for Reasons of it. *Cro. Eliz. 262. pl. 25. Cro.*
Jac. 152. pl. 16. They cannot prescribe to have an
 Interest.

Common Appurtenant is good, as well for Cat-
 tle certain, as also for Cattle *sans Nombre*, and
 may be at this Day by Grant or Prescription. *Plow.*
381. Natura Brevium 130.

A Common was granted *2 H. 4.* to a Prior and
 his Successors and Tenants *imperpetuum*, which Prior,
Or. was seized of a Messuage, and one hundred
 Acres of Land in the Vill where the great Waste
 lay, wherein the Common *pro omnibus averiis suis Com-*

A Man who hath Common in the Land of ano-
 ther for twenty Beasts, and releases his Common
 for ten Beasts, the Residue remains; but where he
 purchaseth

purchaseth Part of the Land wherein he hath Common, the whole Common is destroyed. 4 *Leon. Case 82.* See *Cro. Eliz.* 594.

A Man may prescribe to have Common Appurtenant for all Manner of Cattle at every Season in the Year; but it must be said *Levant and Couchant*. 25 *Aff.* 8.

A Man may prescribe to have Common Appurtenant for his Cattle not commonable, as Hogs, Goats, &c. *Co. Litt.* 122.

A Man may prescribe to have Common of Estovers to his House; but he cannot prescribe to sell the Wood, but must shew that it is to be burnt or spent in the House. 1 *Sid.* 354. 1 *Lev.* 231.

He that hath Common Appurtenant cannot agist the Cattle of a Stranger. 30 *E.* 3. 27. But may take in Sheep to compester his Land. 14 *H.* 6. 6. b. But he cannot use the Common with Cattle which are to sell. *Ibid.* But per *Dodderidge*: One may use the Cattle of a Stranger to agist his Common. 2 *Roll. Rep.* 176.

Upon an Agreement to enclose a Common, Parties who have Interest in the Common, and are not privy to the Agreement, shall not be bound, *Chanc. Rep.* 48. But they declared that it should not be in the Power of one or two wilful Persons to hinder a publick Good. *Ibid.*

A Writ of Admeasurement of Common lies only for and against such as have Common Appurtenant; yet upon this Suit all the Commoners shall be admeasured. *F. N. B.* 125. but *Qu. 1 Roll. Rep.* 365.

If a Man claims Common by Prescription for all Manner of commonable Cattle in the Land of another, as belonging to a Tenement; this is a void Prescription: Because he doth not say that it is for Cattle *Levant and Couchant* upon the Land, to which he claims it to be Appurtenant; for a Man cannot have Common *sans Nombre* Appurtenant to Land: And when he claims the Common for all Cattle commonable, and says not for Cattle *Levant and Couchant* upon the Tenement, this shall be intended Common *sans Nombre*, according to the Words; for there is not any Thing to limit it, when he doth not say for Cattle *Levant and Couchant*. See 1 *Lev.* 196. 1 *Sid.* 313, 314. But where a Prescription is for Common for a certain Number of Cattle as belonging to certain Land, he need not say *Levant and Couchant*, as where the Prescription is for Cattle *sans Nombre*. 2 *Mod.* 185. 1 *Roll. Abr.* 401. pl. 4. 1 *Ventr.* 163. 1 *Mod.* 75. *Cro. Jac.* 27. *March 83. pl.* 137.

But where the Prescription is for Common Appurtenant, *sans Levant and Couchant*, there a certain Number of Cattle ought to be express'd. 12 *Rep.* 66. *March 83. pl.* 137.

But where he purchases Part of the Land, the whole Common is gone.

Common Appurtenant, how it may be.

It may be for Cattle not commonable.

Common of Estovers to be burnt, not sold.

With what Cattle he may use it, and with what not.

Commoners not privy to the Agreement for enclosing of a Common, shall not be bound.

But one or two wilful Persons shall not hinder a publick Good.

For whom a Writ of Admeasurement lies.

How to prescribe for Common Appurtenant.

Levant and Couchant.

How it must be by Prescription.

How Common Appurtenant and in Gross may commence.

Common in Gross, what it is.

commonly by Grant. *Natura Brevium* 31, 37. 1 *Saund.* 343, 346.

It cannot be had by Prescription, but by Custom it may.

Common by Vicinage, what.

the Commoner must put in his Cattle into that Common belonging to his own Vill, and not into that Common belonging to the other; and if one Lord encloses, the other Vill cannot then common. 7 *Rep.* 5. a. b.

Must be by Prescription.

4 *Rep.* 38. a. b. Where it is between two Manors, if one Lord encloses any Part of his Common, the Common for Cause of Vicinage is gone. *M.* 13 *Jac.* It is a Common Appendant. 7 *E.* 4. 26.

How to be pleaded.

Prescription to have Common Appurtenant for Cattle Levant and Couchant upon his House *cum Pertinentiis*.

a House *cum Pertinentiis*, it shall be intended to be upon the Ground belonging to the House. 8 *Rep.* 78. b. 79. a.

Where a Commoner may bring an Action against a Tort-Feazor, without shewing the original Grant.

rest of Judgment, That the Plaintiff had not entitled himself to any Common, nor to the Land in which it was Appurtenant: But it was answered and adjudged, that the Defendant being a Tort-Feazor, such general Declaration against him is well enough. 6 *W. & Pasch.* 32 *Car.* 2. *Rot.* 109. *B. R.* See *Danv. Abr.* 175. See Title Nuisance.

A Common *de Novo* must be by Deed.

of *Menum* and *Tum*, and therefore the Law will see that it hath a good Foundation to warrant it.

A Commoner prescribes to put in twenty five great Beasts, and doth not averr that the Gelding was one of them.

Common Appurtenant and Common in Gross may commence at this Day either by Grant, or else by Prescription. 4 *Rep.* 38.

Common in Gross is Liberty to have Common without Lands or Tenements in the Soil of another; and this may be for Life, or in Fee, and passes

No Man can have Common in Gross by Prescription; but by Usage Time out of Mind he may. 2 *Inst.* 477. 1 *Inst. Sect.* 170.

Common by Vicinage is where there are two Villis, and the Commons join together; to prevent Suits they intercommon one with the other: But

Common of Vicinage ought to be by Prescription, and the one may enclose against the other.

tion, and the one may enclose against the other. 4 *Rep.* 38. a. b. Where it is between two Manors, if one Lord encloses any Part of his Common, the Common for Cause of Vicinage is gone. *M.* 13 *Jac.* It is a Common Appendant. 7 *E.* 4. 26.

How to plead Common of Vicinage. See *Poph.* 201.

The Defendant prescribes to have Common *sans Nombre* for Cattle Levant and Couchant upon his House, *cum Pertinentiis*. Although Levancy and Couchancy cannot properly be upon a House, but upon Land only; yet it being pleaded to be upon

a House *cum Pertinentiis*, it shall be intended to be upon the Ground belonging to the House. 8 *Rep.* 78. b. 79. a.

The Plaintiff brought an Action upon the Case; and sets forth, That he was possess'd of an House and Lands in *D.* and ought to have Common Appurtenant, and that the Defendant dug in the Soil, and made a Cony-burrow. It was moved in Ar-

rest of Judgment, That the Plaintiff had not entitled himself to any Common, nor to the Land in which it was Appurtenant: But it was answered and adjudged, that the Defendant being a Tort-Feazor, such general Declaration against him is well enough. 6 *W. & Pasch.* 32 *Car.* 2. *Rot.* 109. *B. R.* See *Danv. Abr.* 175. See Title Nuisance.

A Common which is of late Times erected, must be erected by Deed, 3 *Nov.* 1643. *B. S.* because it is a Thing against the particular Interest of *Menum* and *Tum*, and therefore the Law will see that it hath a good Foundation to warrant it.

A Commoner prescribes for Common for twenty five great Beasts from such a Time to such a Time, and he justified for putting in of a Gelding, and did not averr that this Gelding is one of them which should

should common there. *Curia*. Great Beasts must be intended Horses, Oxen, Cows, &c. And Issue being joined and found, is well enough, and there need not be an Averment that this Gelding was one of them, when it is not shewn that he put in more than twenty five great Beasts. *Cro. Jac.* 580. pl. 10.

What the great Beasts are.

It is good enough.

The Lord of the Soil of the Common may either surcharge or enclose an Overplus of a Common; that is, so much of it as is more than needful for the Commoners to common upon, in regard of the Largeness of the Common, and the small Number of Commoners, and of their Stock: But if there be not such an Overplus of Common, he cannot surcharge or enclose any Part of it: And, in an Action against the Lord for surcharging, the Surcharge must be shewn particularly, viz. How much Land, and how many Commoners: But against a Stranger the setting forth generally is sufficient. 2 *Mod.* 6, 7. But the Lord may license a Stranger to put in his Cattle, if he leaves sufficient for the Commoners, otherwise not. 2 *Mod.* 6, 7, 275. But where the Lord encloses, and leaves not sufficient Common, the Commoners may break down the whole Enclosure. 2 *Inst.* 88. Note, It must be in the Day-time. See Title *Modanter*. But the Lord cannot license the erecting of a Warren of Conies upon the Common, for this would be in Prejudice of the Commoners. But where there is an Overplus of Common, there the Surcharging or Enclosure can be no Prejudice to them. See *Stat.*

Where the Lord may surcharge or enclose the Common.

of *Westm.* 2. cap. 46. *Stat. de Merton*, cap. 4. 2 *Inst.* 86, 87, 475. *Vaughan* 256, 257.

Mess. 2. rap. 46.
Merton, rap. 4.

The Lord seized of the commonable Wastes, may feed the Common *per Mie & per Tout*. 18 *E.* 3. 43. So a Lord may by Prescription (but not without) agist the Cattle of a Stranger. 30 *E.* 3. 27.

The Lord may common with the Commoners.

Also may by Prescription agist Cattle of Strangers.

A Custom was alledged for customary Tenants to have *solam & separalem Pasturam*, exclusive of the Lord. The Court thought, that unless the Lord had some Part of the Waste appropriated to himself, it is a void Custom, notwithstanding the Case of *North* and *Coe*. *Pasch.* 7. *W. B. R.* Note, It is against the Nature of the Word *Common*, to exclude the Owner of the Soil, it being implied in the first Grant. *Co. Litt.* 122. a.

A Custom exclusive of the Lord, held not to be good.

Commoners cannot exclude the Lord.

In what Cases the Lord who encloses a Forest, Chase, &c. may exclude the Commoners from having of their Common there, and in what not. 8 *Rep.* 136. b. 138.

Where a Lord who encloses a Forest, Chase, &c. may exclude Commoners, and where not.

Avowry for Damage Feasant in his Common, and entitles himself to Common *in Loco quo*, &c. but alledges not any Damage to himself, viz. That he could not have or enjoy his Common *tam amplis modo*, &c. For without a particular Damage he cannot distress a Stranger's Cattle, no more than he can have an Action on the Case.

Where and how an Avowry can be made for Damage Feasant in his Common.

And

And in all Actions upon the Case, special Damages must be alledged.
3 Lev. 104. 9 Rep. 111, 112, 113. 2 Mod. 6, 7, 275.

One Commoner cannot distrein the Cattle of another Commoner, nor of the Lord, but the Cattle of a Stranger he may.

One Commoner cannot distrein the Cattle of another Commoner with him, but he may distrein the Cattle of a meer Stranger, who hath no Prescription of Right. *Lutw.* 1240. *Hob.* 72. 9 Rep. 111, to 113. Neither can they distrein the Cattle of the Lord. 2 *Leon. Case* 254. But *Cro. Jac.* 208. pl. 1.

By the better Opinion of the Judges, where it is a stinted Common, and he puts in more than his Stint, they may be distreined Damage Feasant by a Commoner.

Tho' Commoners may make Surveyors, and distrein Damage Feasant, yet it ought to be in the Name of the Lord, or some Commoner, not in his own Right.

Nor as Pounder.

Where there cannot be a Return *averiorum*.

A Common Nuisance must be reformed at the King's Suit; a private Nuisance at the Commoner's Suit.

Where the Lord shall have the Action, and where the Commoner.

A Commoner can't kill the Lord's Conies upon his Soil.

He is only to take his Common with the feeding of his Cattle.

He can't destroy Conies or Cony-Burrows.

Shack, what sort of Common it is.

until resown; and is in the Nature of Common Appendant or Appurtenant; and although some of the Lands be inclosed, yet after the Corn is gone it shall be used for Common, until resown. 7 Rep. 5. a. b.

Common Appendant. and Common Appurtenant, in case of Purchase of Part.

hath Common Appendant in forty Acres belonging to twenty Acres, if he sell ten of his Acres, or buy Part of the forty Acres, the Common may

Although Commoners have a Custom to make Surveyors of their Fields, and that they might distrein Damage Feasant, yet that ought to be in the Name of him who hath the Freehold, and of some Commoner, but not in his own Right; and so ought the Common Pounder. But that cannot be a good Justification to make an Avowry to have a Return. *Cro. Jac.* 435, 436. pl. 6.

Commune Documentum shall be reformed at the Suit of the King, and Privatum Dampnum shall be reformed by Action at the Suit of the Party grieved; and a Trespass made to several Commoners is Privatum Dampnum, and not a Common Nuisance. 9 Rep. 113. a.

The Lord of the Soil shall have Trespass in the Waste or Common, but the Commoner shall not have it; but *ex consequenti*, viz. the Loss of his Common, or that he cannot have the Enjoyment of it. 9 Rep. 113. a. 2 Mod. 6, 7, 275.

A Commoner cannot kill the Conies of the Owner of the Soil; for the Cony is a Beast of Warren, and profitable, as Deer are, and not to be compared to Vermin; therefore the keeping of them is lawful, and the killing of them unlawful. *Cr. El.* 876. pl. 1. See *Yelv.* 105. *Cro. Jac.* 195. See Title Conies.

A Commoner cannot destroy Conies or Cony-Burrows upon the Common. *Cro. Jac.* 229. pl. 7.

Shack is a Common to be taken in Common Fields from the Time that the Corn is carried off, until resown; and is in the Nature of Common Appendant or Appurtenant; and although some of the Lands be inclosed, yet after the Corn is gone it shall be used for Common, until resown. 7 Rep. 5. a. b.

If he who hath Common Appurtenant in forty Acres belonging to twenty Acres, sells ten of his Acres, the Common is not lost; but if he buy Part of the forty Acres, it is lost. *Hob.* 25, 235. If a Man

may be divided and apportioned *pro Rata*. *Hob.* 25, 235. See also 8 Rep. 79.

A Commoner may abate Hedges erected upon the Common, for he doth not thereby meddle with the Soil, but pulls down the Erection. 2 Mod. 65, 66. *Litt. Rep.* 39.

A Commoner may pull down Hedges.

But where a Commoner intermeddles with his own Land, by selling of it, this shall not turn to his Prejudice; and the Alienee and Lessee of Part shall have Common for all Cattle Levant and Couchant. 8 Rep. 79.

Common Appendant not extinguished by Sale of Part.

If a Man recovers a Common, and the Sheriff upon a Writ of Seisin comes to the Place, and by Parol delivers him Seisin: This is a good Seisin to have an Affize. 22 Aff. 84.

Parol Seisin delivered by the Sheriff, is a good Seisin.

A Commoner cannot cut Bushes, &c. which impair the Common, unless by Prescription. *Bridge*. 10. *Godb.* 182. For if he makes any Thing de Novo in the Land, he is a Trespasser; but he may amend or reform a Thing abused, as to dig down up Holes. 1 *Brownl.* 208.

What a Commoner may do upon the Common, and what not.

By the Stat. of Merton. cap. 4. the Lord may approve his Common leaving sufficient for the Commoners, otherwise not, which Matter may be tried in a Writ of Affize, or Action of Trespass. 2 Inst. 85, 86. *Vaugh.* 257. Or if the Lord enclose any Part, and leave not sufficient Common, the Commoners may in the Day-Time break down the whole Enclosure. 2 Inst. 88. But if it be broken down in the Night by Persons unknown, the Four or Five next adjacent Villages shall be prosecuted in the Crown-Office for the Repair of the Fences, although the Enclosure is not justifiable by the Lord. See Title *Notanter*.

Mole-Hills, or fill up Holes.

Where the Lord may approve, and where not. *Merton*, cap. 4.

Who may approve, and who not. See *Danv.* Abr. 808, 809.

How to be tried.

How to proceed where Fences are broken down *Notanter*.

No Writ of Admeasurement lies against a Commoner, *sans Nombre*. *F. N. B.* 125. D. But the Tenant may distrain his Cattle. 1 *Saund.* 345.

Who may approve, and who not.

Where a Writ of Admeasurement lies not.

A Man prescribes for Common after the Corn reaped and carried away until resown: He must shew when the Corn was reaped and carried away, and when the Field or any Part thereof was resown; for he being confined in what Time to have his Common, he must shew that he is within the time. *Cro. Jac.* 637. pl. 6.

How to plead when he is to have Common from the time the Corn is reaped and carried away till resown.

Common Barretor.

What is a Common Barretor.

A Common Barretor is a common Dober, and Critter of Maintainer of Suits, Quarrels, or Parttes, either in the County or in Courts. 8 Rep. 36, 37. a. Cro. Car. 192. pl. 1.

In Courts.

In Courts of Record and County Courts, Hundred Courts, and other Inferior Courts. Ibid.

In the Country.

I. In Disturbance of the Peace.

II. In the taking and detaining of Possession of Houses, Lands or Goods, which are in Question or Controversie, either by Force, or Subtilty and Deceit. Ibid.

III. By false Invention, and sowing of Rumours, and Reports, making Discord amongst the Neighbours; all which are proved by the Words of the Indictment; which see, 8 Rep. 36, 37. b.

A Man who only prosecutes his own Suits, is not a Common Barretor.

If a Man prosecutes an infinite Number of Suits which are his own proper Suits, this doth not make him a Barretor; for if they are false, the Defendant shall have his Costs: But it is he that stirs up Suits amongst his Neighbours is a Barretor. 8 Ca. 37. b. See 3 Mod. 97, 98. 3 Inst. 175.

A Common Solicitor is a Barretor.

A Common Solicitor is a Common Barretor, and may be indicted for it: Because it is no Profession in Law, per Coke, Trin. 14 Jac. Oliver & Blanchflower.

An Indictment for Barretty reversed for want of contra pacem.

An Indictment for common Barretty was reversed for omitting contra pacem. Cro. Jac. 527. pl. 4.

Compulsion.

See Evidence.

The Law will not compel the Discovery of any Thing which by common Intendment a Man has no Knowledge of.

NONE shall be compelled by Law to shew or declare any thing, of which by common Intendment, he cannot have Knowledge. 38 H. 6. f. 3. Mich. 22 Car. 1. B.R.

For the Law will not suppose foreign Intendments and remote Possibilities, for the Benefit of any Person.

Concord, See Accord.

Condition

Condition that he pay to much to 2. this shall not be confirmed to be a Condition; for it is, none but the Heir at Law can enter for a Condition pro- ken: But it shall be confirmed to the Heir at Law upon Non- payment of the Money: the Heir at Law shall not be liable for Conditions which do not relate to the Estate, but to the Person of the Heir.

Condition.

Of Conditions which do not relate to the Estate, but to the Person of the Heir. Conditions which do not relate to the Estate, but to the Person of the Heir, are not confirmed to the Heir at Law, but to the Person of the Heir. Conditions which do not relate to the Estate, but to the Person of the Heir, are not confirmed to the Heir at Law, but to the Person of the Heir. Conditions which do not relate to the Estate, but to the Person of the Heir, are not confirmed to the Heir at Law, but to the Person of the Heir.

- Covenant.
- Condition Precedent.
- Exposition of Words.
- Limitations.
- Non Dampnificatus.
- Pleas.
- Replications.

Condition is a Restraint annexed and joined to a Thing: So that by the Non-performance, or not doing of it, the Party to the Condition shall receive Prejudice; and by the Performance of it, shall receive Advantage.

The Nature and Effect of Condition.

the Performance

There is a Difference between a Condition which is annexed to an Estate subsequent, and a Limitation subsequent, which is annexed to an Estate presently vested. *Hill. 22 Car. 1. B. R.* The Difference is in Respect of their different Operations upon the Estate.

Difference between a Condition annexed to an Estate subsequent, and a Limitation subsequent annexed to an Estate presently vested.

A Condition cannot be reserved or made but on the Part of the Lessor, Donor, or Feoffor. *Dyer 6. pl. 2.*

Who can make a Condition.

A Condition is to bind the Estate, and to run with it in whosoever Hands the Estate shall come. *Est modus donationis, & cuius est dare ejus est disponere.* *Litt. Rep. 128.*

A Condition binds the Estate in whosoever Hands it comes.

When a Condition in a Deed is created, the Law says that it shall be taken favourably for him, who is to perform it. *4 Leon. Case 161 fol. 70.* See much good Matter there.

How a Condition in a Deed shall be construed.

A Condition in a Will, &c. is a Thing odious in Law, which shall not be created without sufficient Words. *2 Leon. Case 40.*

A Condition in a Will is odious in Law.

In all Cases where after a Condition an Interest is limited to a Stranger, it is not a Condition but a Limitation. *1 Leon. Case 362, Fol. 260, Cro. El. 205.*

Where a Condition and where a Limitation.

The Nature of a Condition is to draw back the Estate to the Feoffor, Donor or Lessor, but a Limitation carries the Estate further. *1 Leon. Case 400.*

The Nature of a Condition and of a Limitation.

fo. 299. Moore fol. 292. Only three Conditions which shall excuse, to wit, against Law, repugnant, and impossible. *Lit. Rep.* 137.

Where a Condition, and where a Limitation. Moore fol. 292.

Where an Estate is devised to the Heir, upon Condition that he pay so much to J. S. this shall not be construed to be a Condition; for if so, none but the Heir at Law can enter for a Condition broken: But it shall be construed to be a Limitation, and then upon Non-payment of the Money the Estate shall cease. *Cro. El.* 204, 205.

Of Conditions which defeat Estates.

The four several incidents that a Condition to create an Estate must have.

Of Conditions which defeat Estates, see at large 2 *Rep.* from 70, to 82. a.

The four incidents that a Condition to create an Estate ought to have, 8 *Rep.* 75. a.

I. It ought to have a particular Estate, as a Foundation whereupon the Encrease of the greater Estate shall be built.

II. That such particular Estate shall continue in the Lessee or Grantee, until the Increase happens.

III. This must be at the time that the Contingency happens, or it shall never vest.

IV. The particular Estate and Encrease must take Effect by the same Deed, or else by several Deeds delivered at the same time. 8 *Rep.* 75. a.

Where a Condition annex to a Portion shall defeat it, and where not.

How Conditions of Bonds are to be pleaded, where Money is to be paid, or some collateral Matter to be done.

Debt upon a Bond to save harmless; he pleads Saved, and says not how.

not say how. It is good upon a general Demurrer, but naught upon a special Demurrer. *Lutw.* 428. See *Cro. El.* 916. pl. 6. See *Cro. Ju.* 165. pl. 1. and 340.

How to plead Performance of Articles.

then say, *Qua sunt omnia, &c.* 2 *Lev.* 117.

A Condition to exhibit a true Inventory, Defendant pleads *Performavit omnia*; it is naught.

What shall be a Performance of a Condition, to make such further Assurance as Counsel shall advise.

Where a Condition annex to the Gift of a Portion shall defeat the Portion, and where not, *Chanc. Rep.* 92.

How Conditions of Bonds are to be pleaded to be performed where Money is to be paid, or some collateral Matter to be done. *Kelm.* 74. b. 75. a.

In Debt upon a Bond, condition'd to save the Plaintiff harmless concerning several Mariners Tickets delivered to the Defendant: The Defendant pleads, That he saved him harmless, and doth not say how. It is good upon a general Demurrer, but naught upon a special Demurrer. *Lutw.* 428. See *Cro. El.* 916. pl. 6. See *Cro. Ju.* 165. pl. 1. and 340.

Where the Defendant pleads Performance of Articles to a Condition of a Bond, he must plead the whole Articles, and not omit any Part; and then say, *Qua sunt omnia, &c.* 2 *Lev.* 117.

A Bond was conditioned to exhibit a true Inventory; the Defendant pleads *quod performavit omnia*; this is an ill Plea: Because he ought to plead a special Performance. *M. & W.*

Where the Condition of the Bond is, to make such further Assurance as Counsel shall advise, (and doth not say, as Counsel learned in the Law shall advise) upon an Issue of *Consilium non dedit Adviseamentum*; it was given in Evidence, That a Draught was

was advised, and drawn by a Scrivener, and held to be a Performance of the Condition, *per* Chief Justice *Seroggs*.

Note, it is on the Obligor's Part to do such Act as will be a Performance of the Condition. *Cro. El. 716. pl. 41. See Cro. El. 872. pl. 8.*

The Obligor must take Care to perform the Condition.

A Condition not to trade in a particular Place is void; but a Promise upon a good Consideration for it, is good. *3 Lev. 242, 243. 2 Leon. Case. 259.*

A Condition of a Bond not to trade in a particular Place is void.

A Condition of a Bond, not to buy Sheeps-Feet, &c. of any other but A. B. and C. D. and not to buy above such a Quantity, is void. *Show. Rep. 2.*

Condition of a Bond to restrain Trade is void.

Where a Bond or Promise restrains the Exercise of Trade, altho' in a particular Place only, yet if there be no Condition for it, it is void; but if there be a Condition, as assigning of a Shop, &c. there it is good, *Aleyn 67.* But if the Restraint be general throughout *England*, tho' there be such a Consideration, it is void.

Where a Bond to restrain Trade, is good, and where not.

If a Bond is void by Act of Parliament, though it appears by the Condition to be a good Bond, yet by averring in pleading the unlawful Condition on which it was given, the Bond may be avoided; but nothing contrary to a Bond can be averred to make it void at the Common Law. *Show. Rep. 3.*

Difference between a Bond void by Statute, and by Common Law.

Although a Condition comprehends two several Things in the Disjunctive of two several Natures; the one, of Rent issuing out of Land incident to the Reversion, and may be suspended by meddling with the Land; and the other, collateral Matter to the Land, which cannot be suspended by a Redemise; yet they are not several, but one entire Condition, which refers to two Branches; and therefore being suspended in Part, is suspended in the whole. *4 Rep. 52. b.*

A Condition in the Disjunctive, if suspended in Part, is suspended in the whole.

Where a Condition of a Bond consists of two Parts in the Disjunctive, and both Parts are possible at the Time of the Bond, and afterwards one of them becomes impossible by the Act of God: The Obligor is not bound to perform the other Part; for the Condition is made for the Benefit of the Obligor, and shall be taken beneficially for him. *5 Rep. 21. b. 22. a. Lutw. 693, 694.*

Condition in the Disjunctive.

One Part becomes impossible by the Act of God.

When a Condition consists of two Parts, and the one is possible to be performed, and the other not, this is a good Condition; and if he performeth that Part which is possible, it sufficeth; but if the Condition be altogether impossible, it is void. *Cro. El. 780. pl. 14.*

A Condition of two Parts, the one possible to be performed, the other not; if the possible Part be performed, it is enough. But where it is impossible, it is void.

Where the Condition of a Bond is against Law, the Bond is void. *Cro. El. 529. pl. 58, 530.*

Where the Condition is against Law the Bond is void,

Condition for a Stranger to do an Act.

The Condition of a Bond to make such a sufficient Discharge as A. B. shall think fit: For that A. B. is a Stranger to the Condition, and the Condition is for the Benefit of the Obligor; he hath taken upon him to perform it at his Peril, and is bound to procure it to be done. 5 Rep. 23. b.

Redemise of Part, and no Entry by Vertue of it; yet the Rent is suspended.

Upon a Re-demise of Part, although there is no Entry by Vertue of the Re-demise; yet the Rent, by Vertue of the Re-demise before any Entry, is suspended. 4 Rep. 52.

How it is where the Words are that it shall be void, or that the Term shall cease.

It was said by Catlin Chief Justice, that as to Conditions there is a Diversity where the Words are that the Lease shall be void, or that the Term shall cease; for if it be that the Term shall cease, then upon the Breach it is immediately ended without Entry. Dalison 114, 115. See Cro. Car. 511, 512. and Title Acceptance. 3 Rep. 64. b. Co. Litt. 215. a.

How it is where the Words are that the Lease shall cease, or that there shall be a Re-entry.

Where the Words of a Lease are, that for the doing or not doing of such a Thing, the Lease shall cease: Here the Grantee of the Reversion may by the Common Law take Advantage of the Breach of such a Condition: Contra where the Condition is conceived in the Words of Re-entry. 1 Leon. 61. See Cro. Car. 511. pl. 6. 513. and Title Acceptance. 3 Rep. 64. b. Co. Litt. 215. a.

Where a Lease is void without Entry, and where not.

There is a Diversity between a Condition annexed to a Freehold and a Condition annexed to a Lease for Years: For if a Man makes a Lease for Life upon Condition; here, if the Condition be broken, the Estate which cannot begin without Ceremony, viz. Livery, being a Freehold, can't cease without Ceremony, viz. Entry; and therefore is not void 'till Entry; but in Case of a Lease for Years, there it is *ipso facto* void without Entry upon the Breach of the Condition; and of a void thing, a Stranger may take an Advantage, but not of a voidable Estate by Entry. Co. Litt. 214. b.

Where an Estate cannot cease without Entry.

Where the Words of a Condition are, That the Estate shall cease and be void, being an Estate of Inheritance in Lands, it cannot cease or be void before it be determined by Entry. Co. Litt. 379. a.

How to impeach a Condition.

If a common Person will impeach one for a Condition, he must shew the Non-Performance of it. Litt. Rep. 139.

Lease upon Condition not to alien without Licence: If the Lessor licenses, it is sufficient for the whole Term.

A Lease upon Condition that the Lessee or his Assigns shall not alien without Licence; yet when the Lessor licenses the lessee to alien, he shall never, by Force of the Proviso, defeat the Term which is absolutely alien'd by his Licence; so that hereby he has dispensed with all Alienations to be made afterwards. 4 Rep. 120.

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Where a Lease is made to three, upon Condition that they, nor any of them, shall not alien without Licence, and afterwards one aliens with Licence, and the others without: Adjudged, That the Condition being determined as to one (by the Lessor's Licence) it was determined as to the rest. 4 Rep. 120. a.

A Condition being entire, cannot be severed by the Act of the Parties. *Ibid.* 120. b.

The Condition of a Bond is, That a Man shall grant all his Lands in B. in the Tenure of J. S. The Defendant may say, That he hath not any Lands there: So if a Man be bound to be nonsuit in all Actions that he hath in *Com. Banco*, he may say, That he hath no Action there. But otherwise it is if the Words of the Condition be particular, *viz.* to be nonsuited in a Formedon. 2 Rep. 33. b. 34. a.

A Bond was conditioned to pay all such Sums, that he is to pay by his several Writings Obligatory, then the Bond to be void. It is no Plea to say that there were not any Writings Obligatory, obliging him to pay any Sum, because it is repugnant to the Condition and also an Estoppel. *Dalison.* 28. pl. 2.

When a Grantee upon Condition is to make an Estate to the Grantor, and no Time limited for it; he shall have during his Life to do it, unless hastened by Request: But if the Grantee dies before it is done, it is a Forfeiture of the Condition. 2 Rep. 78. b. 79. a. See much good Matter in the 6 Rep. 30, 31. to this Purpose; and when Local, and when Transitory.

When the Law appoints a Man to do a Thing during his Life, he ought at his Peril to see it performed; otherwise the Bond is forfeited. But when a Man hath an Election to do one thing or another before a certain Time, and by the Act of God it is become impossible that he should perform the one, the Law shall excuse the other. *Cro. El.* 399.

How the Law came to be altered in the case of Bonds conditioned for the Performance of Covenants, see Title Covenant.

A Bond was enter'd into, with Condition for quiet Enjoyment; the Defendant pleads, That the Plaintiff enter'd, and might have quietly enjoyed; the Plaintiff replied, That he was outed by J. S. This Replication is naught; because he did not say that J. S. had a good Title. *Vangh.* 121, 122.

A Breach of the Condition of a Bond was assigned in the Recovery by Verdict in Ejectment upon a Lease made by A. B. and doth not shew what Title A. B. had to make that Lease, but on-

Condition that they, nor either of them, shall not alien without Licence; one aliens with, and the other without Licence; the Condition is determined.

An entire Condition cannot be severed.

The Condition of a Bond to grant all his Lands; where he may say, That he hath no Lands.

Where Things are General, and where Particular.

The Condition was to pay all Bonds, &c. the Defendant is estopped to say there were no Bonds.

What Time to perform the Condition, where none is limited.

Where a Man is to do a Thing during his Life, he ought to see it done.

But when he may do one thing or another; if by the Act of God one Thing can't be done, he is excused for the other.

Bonds for Performance of Covenant. 8 & 9 Ill. rap. 10.

How to assign a Breach upon a Bond, for quiet Enjoyment.

Replication naught for not setting forth upon what Title the Recovery was.

ly avers that he had a good Title, and doth not say that he had a good and Eigne Title before the Lease; and therefore naught, tho' after Verdict upon a collateral Point. *Cro. Jac. 315. pl. 17.*

How to plead, where some are in the Negative, and some in the Affirmative.

Where there are in Indentures Covenants in the Negative for Non-Feasance, and in the Affirmative for Feasance; there the Defendant is to plead specially to the Negatives, that he hath not broke them; and to the Affirmatives, that he hath performed them.

How when the Negatives are against Law, and the Affirmatives lawful.

When the Negatives are against Law, and the Affirmatives lawful, there he may plead Performance generally; and the Court is to take Notice, that the Negatives are against Law.

How where some are void, and others not.

When some Covenants are void by the Common Law, and others not void, the Bond stands good for those that are good, but not for the other. *Hob. 13. in Margine.*

Where a Condition of a Bond shall be said to be against Law, and where not.

not for Matter out

Where a Condition of a Bond shall be said to be against Law, and that therefore the Bond is void, the same ought to be intended where the Condition is expressly against Law in express Words, and of the Condition. *1 Leon. 73. Case 99.*

Where a Condition is to acquit and discharge, it must be shewn how.

The Condition of a Bond was, That if the Defendant acquitted, discharged, and sufficiently saved harmless the Plaintiff from all Bargains, Incumbrances and Charges, that then, &c. The Defendant pleaded that he saved him harmless from all Bargains, &c. but did not shew how he had discharged him; it was naught. *Cro. Jac. 165. pl. 1.*

Where a Man is bound to acquit another, he must get a Discharge.

Where a Man is bound to acquit another of such a Debt or such a Suit, it's not sufficient to save him harmless; but he must procure a sufficient Discharge. *Cro. Jac. 340, 165.*

Where to plead a special saving harmless; and where *Non dampnificatus* generally.

But where a Condition is to save harmless, the Defendant may either plead specially how he hath saved harmless, or else *Non dampnificatus* without shewing how; because he pleads in the Negative. *Cro. Jac. 363. pl. 24.*

Condition to pay 10*l.* at a certain Day; the Grantee shall not have the Benefit of it, because it is collateral.

Where there is a Condition in a Lease to be void if 10*l.* be not paid at a certain Day, the Grantee of the Reversion shall not enter if the 10*l.* be not paid; because the Condition is collateral, *Moore Case 1228.*

Several Reservations of Rent, and several Conditions of Re-entry for Non-payment.

There are several Reservations in a Lease, and several Conditions for Re-entry for Non-payment of the Rent: Adjudged that the Demise stands joint and entire, and so doth the Condition, notwithstanding the several Reservations of the several Rents. *Moore Case 241.*

How it is where the Condition is both in the Conjunctive, and Disjunctive.

If an Use be limited to certain Persons, until A. shall come from beyond Sea, and attain his Age of 21 Years, or die; if he doth not come from beyond Sea, or attain his full Age, the Use ceases. *Co. Litt. 225. a.*

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Where a Condition of a Bond is to do a collateral Thing, the Acceptance of another Thing cannot dispense therewith. *Cro. Eliz.* 458.

How it is where the Condition is to do a collateral Act.

A Condition to pay 30 l. as soon as A. B. and C. should come to twenty-one; he pleads Payment *tam cito* as they came to twenty-one, but shewed not when they came of Age, nor Time of Payment: And held to be naught. And *per Coke*. A Defendant ought to plead certainly the Time, and Place, and Manner of the Performance of a Condition. *Cro. Jac.* 360.

It is a Rule, that the Certainty of the Time and Place, and Performance of a Condition ought to be pleaded.

Condition Precedent.

See Condition.
Covenant.

A Condition Precedent is where a Man, upon doing of such an Act as is agreed upon, shall have such an Estate, or such a Bargain.

Condition Precedent; what.

In a Condition Precedent a Man ought to perform the Condition before he can take any thing by the Grant, or bring his Action. *Cro. Jac.* 46.

Nothing till the Precedent Condition is performed.

Where there is a Condition Precedent, the Estate shall not be removed out of the Person who hath the Estate, until the Condition is performed. 2 *Plow.* 483. a.

Condition Precedent must be first performed.

Where an Estate is to be created upon a Condition impossible to be performed, there the Estate shall never come in esse. 1 *Leon. Case* 311.

upon an impossible Condition.

A Man covenants to assure an Estate, and the other covenants upon the Assurance *Perform'd* to pay such a Sum; here the Money is not to be paid until the Assurance. But if it had been in Consideration of the Covenant *to be performed*, then he had been bound to pay the Money presently and to take Advantage upon his Covenant. So note a difference between the Words *performed* and *to be performed*. 2 *Leon. Case* 264.

Where the Words are *Performed*, and *to be performed*.

A Grant upon a Condition Precedent to have a Fee may be made as well of Things which lie in Grant, as of Lands which lie in Livery; and

A Grant with a Precedent Condition to have a Fee, in what Cases.

Condition Precedent.

may as well be annexed to an Estate-Tail which cannot be merged, as to an Estate for Life or Years which may be merged by the Accession of a greater Estate: But such Encreaser ought to have these four following Incidents. 8 Rep. 57. a.

The four Incidents to the encreasing of an Estate.

I. There ought to be a particular Estate for a Foundation, for the Encrease of a greater Estate to be built upon, which must be permanent, and not at Will.

II. Such particular Estate ought to continue in the Lessee or Grantee, until the Encrease happen.

III. It ought to vest at the Time of the Contingency, otherwise it will never vest.

IV. The particular Estate and Encrease ought to take Effect, either by one and the same Instrument, or by several Deeds delivered at the same Time. 8 Rep. 75. a.

Confession,

If in an *Ejectione firme* the Plaintiff will not indemnify the Tenant, the Court will suffer him to confess the Action, otherwise not.

IF the Plaintiff in an *Ejectione firme* will not save the Tenant of the Land, against whom the Action is brought, harmless from all Dangers that may befall him, by reason of the Action brought against him, the Court will suffer the Tenant to confess the Action: But if he will save him harmless, the Court will not suffer him to do it. (12 Nov. 1450. B. S.) For as it is Reason that the Tenant should not be prejudiced by the Suit which concerns him not; so neither is it Reason on the other Side, that he should prejudice the Plaintiff by doing of that which he receives no just Benefit by doing it, and by such his doing hinder the bringing of the Right of the Parties concerned to a legal Trial.

Confirmation.

A Confirmation, what it is.

Confirmation is, when any one who hath Right to Lands makes a Deed to another who hath the Possession of them, or some Estate in them, with Intent to enlarge his Estate, or make his Possession perfect.

A Con-

Confirmation.

A Confirmation of Letters Patent which are void in respect that they are against the Law, is a void Confirmation; but if they were not against Law, but did only want Law to authorize them, if they be afterwards confirmed by Act of Parliament, the Confirmation is good. (*Hill. 22 Car. 1. B. R.*) To confirm a Thing, is to give more Strength and Power to a Thing which hath but a weak and imperfect Being, yet hath a Being *tiel quel*: But to confirm a Thing which is void and null in it self, is to confirm a *Non Ens*, and can have no Operation; and such, in Account of the Law, are Things acted contrary to Law.

See an Act entituled, *An Act for Confirmation of Grants made to the Queen's Majesty, and of Letters Patent made by her Highness to others*. See also another of Grants made by Edward the 6th, 1 E. 6. cap. 7. and of Grants made by H. 8. 7 E. 6. cap. 3.

Every Confirmation is either *Perficiens*, *Crescens*, or *Diminuens*, and what they are, and how they operate, see 9 Rep. 142. a.

Upon a Confirmation no new Services or Rent can be reserved. *Ibid.*

Disseisee confirms for an Hour, it is good for ever. 5 Rep. 81. a. b. For a Confirmation cannot for a Time, but is as perfect as it can be, notwithstanding the Restriction of Time. *Vaugh. 27.*

A Confirmation may make a voidable or defeasible Estate good; but it cannot work upon an Estate that is void in Law. *Co. Litt. 295. b.*

A Dean and Chapter confirm *dimissionem præd.* for fifty Years & *non ultra*; the fifty Years are expired; by the Words *Dimissionem præd.* it goes to the whole Term: But if it had been for fifty Years only, then it had been good but for so much. *Cro. El. 447. pl. 12. and 472. pl. 34.*

When two join in a Deed, and the one only hath the Interest, it enures by way of Confirmation from the other, not by way of Estoppel. *Cro. Eliz. 707.*

A Parson leases his Rectory for sixty Years; this was confirmed by the succeeding Bishop and succeeding Patron, neither of them being Bishop or Patron at the Time of the Lease, and yet adjudged good. *Cro. Car. 38. pl. 3.*

Feoffee upon Condition makes a Feoffment over absolutely; the first Feoffor confirms his Estate; he shall hold it without any Condition, be the Confirmation made before or after the Condition broken. 1 Rep. 147. b.

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A Confirmation of Letters Patent against Law is a void Confirmation; otherwise if they wanted only Law to confirm them.

What to confirm a Thing is.

Things done contrary to Law are accounted Non-Entities.

A Confirmation Act of Grants made unto and by Queen Elizabeth.
43 Eliz. rap. 1.
1 E. 6. rap. 7.
7 E. 6. rap. 3.

Of Confirmations, and how they operate.

No new Services or Rent can be reserved.

Confirmation for an Hour is good for ever.

It cannot make a void Estate good.

A Confirmation of *Dimissionem præd.* for fifty Years.

And a Confirmation for fifty Years only.

Where a Deed enures by way of Confirmation.

A Parson leases his Rectory for Years, and it was confirmed by the succeeding Patron and Ordinary; and good.

Feoffor confirms the Estate of Feoffee upon Condition, the Condition is gone.

Feoffee

Feoffee on Condition grants a Rent in Fee, Feoffor confirms it, the Condition is broken, yet the Rent remains.

A Confirmation is to bind the Right, not to alter the Nature of the Estate.

Shall not discharge a Condition, but is only to bind the Right of him who made it.

Confirmation.

Feoffor upon Condition grants a Rent in Fee; the Feoffor by another Deed confirms it to him and his Heirs; afterwards the Condition is broken, and the Feoffor enters for the Breach, yet the Rent remains. *1 Rep. 147. b.*

A Confirmation is to bind the Right of him who makes the Confirmation, but not to alter the Nature of the Estate of him to whom the Confirmation is made. *Poph. 51.*

A Confirmation shall not discharge a Condition, but it is only to bind the Right of him who made it in the Possession of him to whom it is made: But not upon Condition. *Ibid.*

Conies and Cony-Burrows.

See **Common and Commoners.**
Nuisance.

Conies are *feræ Naturæ* out of the Owner's Ground.

A Man makes Cony-Burrows upon his own Land, which increase so much, that they destroy the Profits of his Neighbour's Lands: No Action lies for this. But the Owner of the Lands may kill them, because they are *feræ Naturæ*; and he who made the Cony-Burrows hath not any Property in them. *5 Co. 104. b.* But *2 Leon. Case 254.* seems otherwise in Case of Cony-Burrows made in a Common by the Lord; but if there be not sufficient Common, an Action on the Case will lie against him.

A Commoner cannot kill the Conies in the Lord's Land.

If the Lord surcharges the Common, then what Remedy.

Where the Lord may say *Cuniculos suos.*

A Commoner cannot destroy Conies or Cony-Burrows.

A Commoner cannot kill the Conies upon the Lord's Land, for he hath nothing to do with the Land but to put in his Cattle, and may not meddle with any thing of the Lord's there; and as the Lord may have great Beasts there, so also he may have Beasts of Warren; and if the Lord surcharge the Common, he can only have his Assize or Action on the Case. *Cro. Jac. 195. pl. 21.* The Lord hath a Property in them, and may say *Cuniculos suos* so long as they are upon his own Ground, but not when they are gone out.

A Commoner cannot destroy Conies nor Cony-Burrows; for he hath nothing to do with the Common but for the feeding of his Cattle. *Cro. Jac. 229. pl. 7.*

Conies and Cony-Burrows.

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An Action lies not for a Commoner against a Man for maintaining of Conies in his own Ground, whereby they damaged his Common; but by all the Judges, He may kill them, for no Body hath any Property in them. *Cro. Car.* 387. *pl.* 20. 388.

See *Cro. Jac.* 195. *pl.* 21. that a Commoner cannot kill the Lord's Conies which are upon his own Land. See *Cro. Jac.* 292.

Trespass for breaking of the Plaintiff's Close, and hunting of his Conies: Moved in Arrest of Judgment, that no Action lies, because they are *feræ Naturæ*. Ch. Justice. The Conies are as much in his own Ground as if they were in a Warren, and the Property is *ratione soli*; the Warren doth not give a greater Property. 5 *Mod.* 375, 376.

Conies are *feræ Naturæ*, and not tithable but by Custom. 2 *Keb.* 140. *pl.* 10. *Bro.* 11. in *Dismes*, *Litt. Rep.* 13.

An Action lies not for a Commoner against a Man for his Conies coming into his Common, but he may kill them.

Trespass for *clausum fregit*, and hunting of his Conies.

Where Conies are not tithable.

Consideration.

See { Assumpsit.
Bargain and Sale.
Uses.

A Consideration is the material Part of a Contract; without which no Contract can bind the Parties.

A Consideration, what.

One may sell his Freedom and Privilege for a Consideration. (*Trin.* 24 *Car. B. R.*) But without a Consideration he cannot part with it so, but that he may recall his Grant of it at his Pleasure; for by the Consideration there is *quid pro quo*, and it is intended he hath a full Recompence for his Freedom, by reason of his own Contract. See more of this in the Title Bargain and Sale.

A Man may sell his Freedom and Privilege for a Consideration.

Where a Fine is levied, and no Deed to lead the Use, this Fine shall in Construction of Law be to the Use of the Person who levied the Fine.

If there be no Deed to lead the Uses of a Fine, it shall be to the Use of the Confor.

If there be a double Consideration for the grounding of a Promise, for the Breach whereof an Action is brought; though one of the Considerations be not good, yet if the other be good, and the Promise broken, the Action will well lie upon that Breach. (*Trin.* 1651. *B. S.*) For that one Consideration is enough to support the Promise.

Action for Breach of Promise grounded on two Considerations, one of which is naught; yet if the other be good, the Action lies.

It is a Rule, That every Thing which is a Ground for Equity, is a sufficient Consideration. *Latch* 21.

A Ground for Equity is a good Consideration.

What Considerations are good, and what not.

The not prosecuting of an Attachment out of Chancery, a good Consideration.

The not prosecuting of an Outlawry, a good Consideration.

A Consideration futurely to be performed, must be precisely alledg'd to be performed.

In Consideration that the Plaintiff would pay him so much as his Wares cost him, he promised never to keep a Mercer's Shop again in N. an Action well lies if he doth.

In Consideration of 10 s. he promised to pay 100 l. if he ever kept a Draper's Shop in N. and held to be good.

A Consideration ought to be Matter of Profit and Benefit to him to whom done.

If Part of a Consideration be good, it sufficeth.

But if it consists of two or more Parts, and every of them good, there he ought to shew Performance.

If one of the Considerations be found false, the Action is gone.

Forbearance of a Suit in Equity is a good Consideration.

A Consideration void in Part, is void in the Whole.

Assumpsit lies not upon an illegal Consideration.

A Consideration executed cannot be travers'd.

No Consideration can be good, if not, that it touch either the Charge of the Plaintiff, or the Benefit of the Defendant. 1 Leon. 114.

The not prosecuting of an Attachment out of Chancery, although a Court of Equity, yet adjudged a good Consideration to ground an Action upon. Cro. El. 847. pl. 1. and 768.

To stay prosecuting upon a *Capias Utlagatum* after Judgment, till the next Term, he would pay the Money; adjudged a good Consideration, tho' insisted that it was only at the King's Suit.

A Consideration futurely to be performed must be alledged to be precisely performed, otherwise the Action lies not; and an Allegation that *paratus fuit* to perform, will not do. Cro. Jac. 583. pl. 3.

In Consideration that the Plaintiff would pay him so much for his Wares as they cost him, he promised not to keep a Mercer's Shop any longer in N. And moved that this is against Law, to restrain any Man from using his lawful Trade. *Cur' contra.* It is voluntary; and one may upon a valuable Consideration restrain himself from using his Trade in such a particular Place. Cro. Jac. 596. pl. 19. 597.

A Man for 10 s. promised to pay 100 l. if he henceforward kept a Draper's Shop in Newgate-Market, and held good. *Ibid.* 197.

A Consideration ought to be Matter of Profit and Benefit to him to whom it is done, by reason of the Charge or Trouble of him who doth it. Cro. Car. 8. pl. 5.

If Part of the Consideration be good, it sufficeth; and he ought to alledge Performance of that Part of the Consideration which is material and valuable: But where a Consideration consists of two or more Parts, and every of them is valuable, there he ought to shew Performance of every Part thereof. Cro. Eliz. 579.

But if two Considerations be alledged, and one of them is found false by the Jury, the Action fails. Cro. El. 848. pl. 1.

The Consideration of Forbearance of a Suit in Equity is a good Consideration to maintain an Action. Cro. Eliz. 847. pl. 848.

A Consideration which is void in Part, is void in the Whole. Hob. 126.

An *Assumpsit* lies not upon an illegal Consideration. 2 Lev. 161.

A Consideration executed cannot be traversed, because it is past, and incorporated with the Promise: And if it were not then actually done, it is *Nudum Pactum*. Hob. 106.

But

Consideration.

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But if the Promise be executory, as in Consideration that you will serve me a Year, I will give you 5*l.* you cannot bring your Action till the Service is performed: But if it were upon a Promise on either Side executory, there needs no Averment of Performance; for it is the Counter-promise, and not the Performance, which makes the Consideration. *Ibid.* See *Cro. Jac.* 7.

If the Promise be executory, an Action lies not till the Thing be done.

But otherwise, when on either Side executory.

The Law establishes free Gifts without Considerations. *Hob.* 220.

A free Gift is good without a Consideration.

A false Consideration material, if past, shall not hurt a Grant of the King; yet a future Consideration, if not performed, will avoid it. *Hob.* 231.

What Considerations for the King's Grants.

Consideration of natural Affection only, and Consideration of natural Affection with 20*l.* will raise an Use to a Son. But Consideration of 20*l.* only to a Son without natural Affection, will not raise an Use without Inrolment. 1 *Lev.* 56.

What Considerations will raise an Use to a Son or a Relation.

If a Deed of Feoffment be made to two or three, of Lands or Tenements, and no Consideration is expressed in the Deed for the making thereof; it shall be intended by the Law, that it was made to them in Trust for the Use of the Feoffor: So likewise of a Fine or Recovery: (*Mich.* 24 *Car.* 1. *B. R.*) For it shall not be intended he would part with his Land without a Consideration; and yet the Deed shall be construed to operate something, and also that which shall seem most reasonable.

A Feoffment without a Consideration is to the Use of the Feoffor.

A Consideration altogether past is not good: As if a Man hath disbursed several Sums for me without my Request; and afterwards I say to him, that in Consideration that he hath paid the said Sums for me, I promise to pay him. This is no Consideration, because it was executed before. *Moor* 220. *pl.* 357. But *aliter*, if at my Request. *Cro. El.* 282.

A Consideration past is not good.

Conspiracy.

Conspiracy.

See Action.

Conspiracy, what.

Conspiracy is an Agreement of Men to do an evil Thing; as falsely to indict a Man of Felony, or other unlawful Crime: And there must be two or more concerned in it. See 33. E. 1. Stat. 2.

Lies not against the Grand Jury, where the Party indicted of Murder, &c. is acquitted.

When a Grand Inquest of themselves indict one of Murder or Felony, and after the Party is acquitted, yet no Conspiracy lies for him who is acquitted, against the Indictors: Because they are returned by the Sheriff by Process of Law to make Enquiry of Offences upon their Oaths, and it is for the Service of the King and Commonwealth. 12 Rep. 23.

Case lies for maliciously prosecuting of an Information of Battery in the Clerk of the Crown's Name.

Case lies for maliciously prosecuting of an Information in the Name of Sir Samuel Astry for a Battery, wherein the now Plaintiff, then Defendant, was found Not guilty. Pasch. 35 Car. 2. B. R. Style's Rep. 424. 3 Lev. 140.

So for prosecuting an Indictment, which was quash'd.

So also it lies for prosecuting of an ill, false, and malicious Indictment, which was quash'd. Vide Postea. It lies not where the Defendant was acquitted upon an ill Indictment, and why.

Case lies for maliciously and falsely accusing of the Plaintiff of Felony, and preferring of an Indictment, which was found Ignoramus.

Case lies for maliciously and falsely accusing the Plaintiff of Felony, and preferring a Bill of Indictment against him at the Assizes, whereupon it was found Ignoramus. See Cro. Jac. 490. pl. 10. where it is said, that exhibiting of a Bill upon true just Presumptions is excusable: Yet when it is alledged that he *falso & malitiose*, without any just Cause, accused him of Felony, and exhibited his Bill *falso & malitiose*, it is a just Ground of Action for the Plaintiff. See also 1 Rol. Abr. 111. See Raym. 176. 1 Ventr. 18; 19. 1 Saund. 228. It was said in a Declaration, That the Defendant caused him to be indicted, &c. and that the Jury said, *Quod ignorabant*; and said, That it was a good Declaration, and need not to be Ignoramus. 2 Jones Rep. 20.

Conspiracy.

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Per Coke, Chief Justice. Tho' an Action on the Case will lie for procuring one to be indicted of Felony, yet such Action was never brought for procuring one to be indicted of Treason. *Cro. Jac.* 358. But *Cro. Jac.* 15. pl. 6. adjudged upon great Consideration, that it well lay, which they said was the first Precedent.

Tho' an Action lies for falsely indicting of Felony, yet never was for Treason.

But since adjudged, that it lies for Treason.

If a Man brings an Action on the Case, for maliciously causing of him to be indicted of an Offence, and prosecuting of it until he was *Legitimo modo acquietatus*; if the Indictment was not good, an Action doth not lie, for he was not *Legitimo modo acquietatus*. *Hill. 8 Car. in B. R. between Hunt and Lines*: And 3 *Leon.* 139, 140. A Declaration was held good where it was only said, *Quousque acquietatus fuit*, without saying of *Inde*, or *De premissis*. *Yelv.* 161. *Cro. Jac.* 130. pl. 3. *Cro. Jac.* 230. pl. 2. *Cro. Car.* 286. pl. 33. 420.

No Action lies if the Indictment was naught.

A Declaration held good, without saying, *Inde acquietatus*, or *De premissis*.

The Words *Falso* & *Malitiose* are absolutely necessary in these Declarations. *Danv.* 208. See *Danv.* 213. *Cro. Jac.* 194.

There must be the Words *Falso* & *Malitiose*.

A Writ of Conspiracy lies for him that is indicted of a Trespass, and acquitted, though it was not of Felony. 3 *Aff.* 13. 3 *Leon.* 140. So also upon an Indictment for a Riot. 5 *Mod.* 405, 406.

It lies for an Acquittal upon an Indictment of Trespass.

This Action ought to be handled with a great deal of Caution after the Grand Jury have found the Bill; but indeed unless it be found, no Action lies, for the Party is not dampnified, neither is it a good Ground of Action against a Man that barely procured him to be falsely indicted, but there must be express Malice found, that it may appear that the Prosecution was not for the sake of Justice, but to gratifie the Party's peevish Revenge or Malice. 5 *Mod.* 410. See *Latch* 79, 80.

It lies not where the Grand Jury find the Bill.

Good Advice given by the Chief Justice for the bringing of this Action.

Express Malice must be found.

Where the Indictment is preferred maliciously, and contains Matter of Imputation and Slander as well as Crime, there the Action lies; but not where the Indictment contains Crime without Slander, as *Raym.* 180.

Where it lies, and where not.

forcible Entry, &c.

If the Person were ever so innocent, yet if there were a probable Cause of Prosecution, an Action will not lie; for it must be direct Malice, without any Colour or Cause, that will support an Action. *Mod. Cases* 25.

It must be direct Malice that will support an Action.

Mod. Cases 25.

One alone cannot conspire.

But Case will well lie.

Conspiracy was brought against two; one is found Not guilty, the other shall not have Judgment; for one cannot conspire alone. But in an Action on the Case in the Nature of a Conspiracy, it had been good. *Cro. Eliz.* 701. pl. 18. *Cro. Jac.* 194.

Conspiracy.

Case lies not where
Conspiracy doth lie.

Where it lies against
a Justice of the Peace,
and where not.

For a false and malici-
ous Citation into the
Spiritual Court.

No Action lies where
done in Prosecution of
Justice.

Where an Action lies
upon an Information to
a Justice of the Peace,
and where not.

Where a probable
Cause will not excuse an
Action.

Where no Action of Conspiracy lies against two,
no Action of the Case lies against one. 2 *Bulfr.*
270, 271.

An Action lies not against a Justice of the Peace,
who sends out his Warrant upon a false Accusation;
but it lies if he make it out without any Accu-
sation. 1 *Leon.* 187.

It lies for falsely and maliciously citing of a
Churchwarden into the Spiritual Court, and ex-
communicating of him for not rendring of an Ac-
count, when he had done it. *Raym.* 418.

If a Man hath good Cause of Suspicion that a
Felony is committed, and that J. S. is guilty of it,
and causes him to be indicted; though no Felony
was committed, yet no Action lies, because it was done in Prosecution
of Justice. 1 *Rol. Rep.* 438, 439. But if A. imposes the Crime of Fe-
lony, where no Felony was committed, and maliciously causes him
to be arrested for it; Case lies upon such a Declaration, without al-
ledging of any particular Felony of which he was accused. 1 *Rol. Abr.*
43. pl. 3. 115. pl. 7. See *Cro. Jac.* 190, 191, 131, 193. pl. 19. 194.

Where one whose Goods are stolen comes to a
Justice of the Peace, and shews him the Matter,
and prays that it be examined, and such an one is
examined upon it, here no Action lies; but if such
a Person will expressly say that such a Man hath
stolen, &c. and procure a Warrant from a Justice to arrest the Party
upon such Surmise, here an Action will lie. 3 *Leon. Case* 146. See
Cro. Jac. 130. pl. 3. 131.

A probable Cause will not excuse a Man for in-
dicting of another of a Trespass; for since he might
have brought an Action, the Indictment will be
taken to be malicious. 2 *Mod.* 306.

Constable.

Constable.

Sec. **Actions.**
Leet.

Of Constables there are two Sorts: High Constables, who are Constables of an Hundred; and Petty Constables, chosen yearly at the Court-Leets, for Cities and Townships within their Jurisdictions.

Constables, what.

If one that is elected to the Office of Constable refuse to take the Oath to serve in that Office, this Court may send forth a Writ of *Mandamus* to him to compel him to do it. (*Mich. 22 Car. 1. B. R.*) For in all extraordinary Cases, which concern the Peace and good Government of the Nation, this Court is to enforce Obedience where ordinary Means fail; as being the supreme Court.

If a Man chosen Constable refuse to take the Oath, B. R. may issue a *Mandamus* to compel him.

If a Court-Leet do not elect a Constable where they ought to elect one, or do not give him his Oath to execute the Office as they ought to do, the Quarter-Sessions in the County where the Leet lies, may do it. (*Mich. 22 Car. 1. B. R.*) For the electing and establishing such Officers is for the Peace and Safety of the County where they ought to be elected; which Peace and Safety is intrusted with the Justices of the Peace there in their Quarter-Sessions.

In Default of a Court-Leet, Quarter-Sessions may appoint a Constable.

A Constable ought to be *Idoneus Homo de Inhabitantibus*; that is, a Man of Honesty, Knowledge, and Ability. 8 Rep. 41. b. And if one be elected Constable who is not *Idoneus*, he may be by the Law discharged of his Office, and another put in his Place. 8 Rep. 42. a.

A Constable ought to be *Idoneus Homo*:

Or discharged.

A Leet may fine a Man for refusing to take the Office of Constable upon him, but the Sessions cannot; but they must proceed by Indictment. 5 Mod. 96. See more for this with the Pleadings, 124, 125, &c.

A Leet may fine for not taking the Office of Constable, but the Sessions cannot.

A Prisoner brought up upon a *Habeas Corpus* with a Return that he was committed by the Justices of the Peace to the Gaol at the Sessions holden, &c. till he should obey an Order for taking the Office of Constable upon him, which he refused, because he did not, as he said, live within that Liberty: And held, That they ought not to commit him (he pretending that he was not within the Liberty) but should have caused him to be indicted upon his Refusal, and if he were found to be within the Liberty, then to have set a good Fine upon

How to punish a Man who refuses to take upon him the Office of Constable.

upon him for his Refusal, and after that to have committed him for it. *Cro. Car. 565. pl. 4.*

Where a Constable may take an Offender into Custody without a Warrant:

Where a Constable cannot.

Constable cannot do this without a Warrant from a Justice of the Peace for that Purpose. *Hill. 1 Ann. For if the Breach of the Peace be out of his Sight, he cannot. Cro. Eliz. 375. pl. 25.*

How far a Constable may imprison a Man.

An Alderman discharged from being a Constable.

the Lord of the Manor and Steward of the Leet to discharge him by Reason of his Attendance upon the Court of Aldermen. *Cro. Car. 585. pl. 3.*

A Constable may carry his Prisoner before what Justice he will.

The Privileges given to Constables by 21 Jac. cap. 15.

Costs; and also they must not be sued out of the proper County where the Fact was committed.

What he must do in Case of Vagabonds.

5 Ann. Sess. 2. which gives an Appeal to the Sessions upon the Rates of Constables, Headboroughs and Tythingmen.

other Person relating to such Demands, then such Person may appeal to the next Quarter-Sessions, whose Determination shall conclude all Parties.

How a Deputy-Constable may be made, and what he is.

A Constable can only make a Servant, but a Deputy must be sworn, and act of himself as well as a Constable. 2 Keb. 309. pl. 12. 1 Sid. 355. pl. 5. 2 Keb. 321. pl. 41. A Constable may depute, but the Constable is the Person responsible and sworn, and the other but a Servant or Assistant; but the Deputy-Constable must be sworn as well as the Constable himself.

A Constable may, without any Warrant, take into his Custody any Person whom he sees committing of a Felony, or Breach of the Peace. But if a Person be seized by a Stranger upon Suspicion of Felony, and the Person who seized the Prisoner sends to a Constable to take him into his Custody, and carry him to a Justice of the Peace; here the Constable cannot do this without a Warrant from a Justice of the Peace for that Purpose. *Hill. 1 Ann. For if the Breach of the Peace be out of his Sight, he cannot. Cro. Eliz. 375. pl. 25.*

A Constable cannot imprison a Man at his pleasure, but according to Law, viz. to stay him, and bring him before a Justice of the Peace, to be there examined. 1 Leon. 327.

An Alderman of London who was chosen a Constable in the County where he dwelt, and was fined at the Court-Leet for not accepting of the Office, had upon Motion a Writ of Privilege granted to

Where a Warrant is directed to a Constable to bring the Prisoner before him who made the Warrant, or any other Justice, the Constable may carry him before what Justice he pleases. 5 Rep. 50. a. b.

The Statute of 21 Jac. cap. 15. authorizes Constables, and their Assistants, to plead the general Issue, and if they recover it, gives them double

What a Constable must do in Case of Vagabonds, Beggars, &c. See Title Vagrants and Vagabonds.

That in Case any finds himself grieved by the Demands for Disbursements of any Constable, Headborough or Tythingman, to be paid by any of the Parishes or Towns to which they belong, or by any Sess, Rate or Tax done by them or any

other Person relating to such Demands, then such Person may appeal to the next Quarter-Sessions, whose Determination shall conclude all Parties.

A Constable can only make a Servant, but a Deputy must be sworn, and act of himself as well as a Constable. 2 Keb. 309. pl. 12. 1 Sid. 355. pl. 5. 2 Keb. 321. pl. 41. A Constable may depute, but the Constable is the Person responsible and sworn, and the other but a Servant or Assistant; but the Deputy-Constable must be sworn as well as the Constable himself.

Contempt.

See { Attachment.
Commitment.
Ejectment.

Contempt is a Disobedience to the Rules and Orders of a Court which hath Power to punish such Offence.

Contempt, what.

One may be committed for a Contempt done to the Court ; but the Matter of the Contempt must be certain, and not doubtful, and must be either in open Court, or upon Affidavit made thereof. (Mich. 22 Car. 1. B. R.) For else the Party may perchance be wrongfully committed, which the Court will be cautious not to do.

A Man may be committed for a Contempt of the Court ; but the Matter of the Contempt must be certain.

An Attachment lies against one for a Contempt done to the Court. (*Hill, 22 Car. 1. B. R.*) to bring him in to answer the Contempt; and in some Cases the Court will command a Tipstaff to bring the Party in.

Attachment lies for a Contempt.

Per Cur. An Affidavit of the Lie given by any Man to another in the Hall, they will bind him to his Good Behaviour: So for any Provocations that may induce any Quarrels or Striking. 1 *Keb.* 558. *pl.* 27.

The Court will bind to the Good Behaviour for the Lie or other Provocations given in *Westminster-Hall*.

If the Court makes a Rule in an Action of Trespass and Ejectment, that the Defendant in the Action shall confess Lease, Entry and Ouster; and yet at the Trial the Defendant will not do it, so that the Plaintiff thereupon becomes Nonsuit: The Plaintiff, the Term following, upon the Return of the *Postea*, and Rules given, hath his Judgment against the casual Ejector, and his Costs tax'd him by the Secondary, upon his Rule to confess Lease, Entry and Ouster: And upon a Demand made of the Costs of the Lessor by one who hath Authority for it, and his Neglect or Refusal of Payment, upon Affidavit made thereof, this Court will grant an Attachment of Contempt against him, for disobeying the Rule of the Court. *Pasch. 24 Car. 1: B. R.*

Attachment lies for not paying the Costs upon a Nonsuit in Ejectment.

Continuance.

It is a Contempt for an Attorney to make out Execution after a Writ of Error brought, and Notice given of it.

If a Writ of Error to reverse a Judgment in this Court is brought and allowed, and Notice given of it to the Attorney of the other Side, and Bail put in, and the Attorney doth notwithstanding sue out Execution; this is a Contempt to this Court. (*Trin. 24 Car. 1. B. R.*) But it is no Contempt, if Notice be not given to the Attorney of the Writ of Error brought, and Bail put in, as the Statute requires. *Mich. 1649. B. S.*

Contingency, See { Remainder.
 { Cases.

Continuance.

See { Discontinuance.
 { Elegit.

Continuance, what.

Continuance is the continuing of the Cause in Court by an Entry upon the Records there for that Purpose.

An *Elegit* may be continued upon the Judgment-Roll, with a *Vic' non misit Breve*, to save a *Sci' Fa'*, altho' no *Elegit* ever sued out.

A Judgment was above ten Years standing, and an *Elegit* was sued out upon it, and executed; but the Judgment was not revived by *Sci' Fa'*: The Court was moved to stop the filing of the Writ, as being irregular; the Defendant's Counsel insisting also, That the Plaintiff's Attorney had after the suing out of the *Elegit*, entred the Continuance of an *Elegit* upon the Roll until the Time of the Execution of the *Elegit*: The Court were of Opinion at first, That there could be no Continuance of an *Elegit*, unless there were an *Elegit* actually sued out (which could not be proved to be sued out in this Case.) But the Court having enquired of Sir Samuel Astry, and other the ancient Practisers then present, what the Custom had been in this Case, were informed, That in all other Cases (except that of an *Elegit* only) the Practice was to sue out the Writ first, and continue it afterwards upon the Roll: But in the Case of an *Elegit*, the Practice was to enter the Continuance of Course, with a *Vic' non misit Breve*. And thereupon the Court declared, That they would not alter the ancient Practice of the Court, and therefore made no Rule in it. *Seymour Mil' & Granvil. Mich. 5 W. & M.* But I have been informed that the Court hath since ruled it otherwise.

When Continuances and Effoins are amendable.

Continuances and Effoins are amendable upon the Roll at any Time before Judgment. 3 *Lev.* 429, 430.

Continuance.

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The Plaintiff, after a Demurrer joined, and before the *Consilium*-Day, died; and upon the *Consilium*-Day the Defendant's Counsel had a Plea in his Hand of the Death of the Plaintiff *post ultimam Continuationem*; and pray'd, That the Court would order the Attorney to fill up the Blank in the Roll for the Continuance to that Day: But the Court, upon Affidavit made that the Plaintiff was alive till about ten Days in Term, refused to do it. *Row's Case 2 Anna, B. R.*

How to plead Death of the Plaintiff, *post ultimam Continuationem*.

Continuando.

See Trespass.

Continuando is the laying in an Action of Trespass the Continuance of it.

Continuando, what.

In an Action of Trespass for the breaking of the Plaintiff's House, and taking and carrying away of twenty Loads of Corn, *totam Transgressionem predictam, a predicto vicesimo die Octobris anno supradicto usque vicesimum diem Novembris tunc proxime sequentem diversis diebus & vicibus Continuando*. This *Continuando* is naught: Because it is against humane Nature, to continue Night and Day for a Month together committing of Trespass; for Mankind must take some Rest, and every particular Day's Trespass is a several Trespass. But where Cattle do trespass upon Ground, they are continually Night and Day trespassing; and therefore the *Continuando* in that Case is good. *Hill. 7 W. Howard & Wilson B. R.*

Where a *Continuando* laid in a Declaration is good, and where not.

Trespass for breaking of an House with a *Continuando*, this is good; for until there is a Re entry, the Continuation of the Possession is a continuing Trespass. *Pasch. 8 W. B. R. Lutw. 1312.*

Trespass for breaking of an House with a *Continuando*, is good.

If you lay an Ouster in your Declaration, you must lay a Re-entry, or else you cannot recover the Mean Profits; but if you enter, you may lay a *Continuando*, if it will bear it, and recover Damages for the Entry and Mean Profits. *Mod. Cases 39.*

Where Mean Profits are to be recovered with a *Continuando*.

In Trespass with a *Continuando* of divers Things, and of some of those Things there could be no *Continuando*; yet it shall be good for those Things for which the *Continuando* could be, and not for the others. But if the *Continuando* had been particularly of those Things whereof a *Continuando* could not be; then it had been naught. *3 Lev. 94.*

Trespass of divers Things with a *Continuando*; and for some there may be a *Continuando*, and for others not. It is good for those for which it may be.

It is usual to lay the *Continuando* for longer Time than you can prove; but Damages shall be given for what can be proved. *2 Mod. 233.*

A *Continuando* may be laid for longer Time than can be proved.

Contrad.

Contract.

See { Agreement.
Assumpsit.
Usury.

A Contract, what.

A Contract is a Bargain between two or more Parties, where one Thing is given for another, which is called *Quid pro quo*.

Usurious Contract may either be accepted or refused by the Party.

No usurious Contract can be grounded upon a Bargain which may not either be accepted or refused by the Party. (*Hill. 21 Car. 1. B. R.*) For it is within the Statute; and the Party cannot be prejudiced but by his own Consent.

Usurious Contract, tho' not within the Words, is within the Equity of it.

If a Contract be usurious, and made so that the Statute may be avoided; yet it is a corrupt Bargain, and shall be adjudged to be within the Statute. (*Hill. 21 Car. 1. B. R.*) For it shall be within the Equity of it, though it be not within the Words: For the Statute being a beneficial Law for the Commonwealth, shall be extended to Equity, especially where there appears to be Subtilty used to avoid the Statute, and the Penalty of it.

A Parol-Contract may be dissolved by Parol, before broken.

An absolute Parol-Contract may be dissolved by Parol before it be broken, if there be good Consideration for the dissolving of it, else not: Because it is intended, that it was made upon a good Consideration, and therefore it is not reasonable it should be avoided without good Consideration: But a Promise, without a good Consideration, is but *Nudum Pactum ex quo non oritur Actio*.

Every Contract implies an *Assumpsit* in Law.

Every Contract doth imply in it self an *Assumpsit* in Law to perform the Contract; for a Contract will be to no Purpose, if there were not a Means to enforce the Performance of it.

An Action lies upon the Breach of Part of an entire Contract, in Case.

If I promise to pay 20 *l.* viz. 5 *l.* at such a Day, other 5 *l.* at such a Day, &c. an Action lies for Non-payment of the first 5 *l.* and so on for every one; and it is not like to the Case of a single Bill. 2 *Leon. Case*

Contract.

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Case. 137. Or Debt upon a Contract where the Money is to be paid at several Days, for in this Case no Debt is to be recovered but only Damages. 2 Leon. Case 279.

But not in Debt.

A Sum mistaken in an Action upon a Contract is fatal.

Not where it is upon a Promise in Law.

How it is where a time is appointed for the Payment of the Money, and where not.

Where an Action is brought upon a Contract, if the Plaintiff mistakes the Sum agreed upon, he fails in his Action; but if he brings it upon the Promise in Law which arises from the Debt, there, tho' he mistakes the Sum, he shall recover. Aleyn. 29.

There is a Diversity where a Day of Payment is limited, and where not; for where it is limited the Contract is good presently, and an Action lies upon it without Payment; but in the other not:

As where a Man buys 20 Yards of Cloth, the Bargain is void if he doth not pay the Money presently; but if Day of Payment be given, there the one may have an Action for the Money, and the other Trover for the Cloth. Dyer 30. a. 293.

If I do promise to pay a Debt to J. S. which Debt is owing to him from G. D. this is *Nudum Pactum* for want of a Consideration; and if I do

What Promises are *Nudum Pactum*.

not pay it, yet an Action doth not lie against me, for not paying of it according to my Promise: But if I promise to pay it, if J. S. will forbear to sue G. D. for it 'till such a Time, or such like Consideration; this is a good Promise, for here is a good Consideration, for this Forbearance may be a Prejudice to J. S. and a Benefit to G. D. and also to him that makes the Promise: But the Statute of Frauds and Perjuries hath since altered the Law in this Case. See for this in Title Agreement.

Contribution.

See Audita Querela.

Contribution is in two Cases: viz. First, Contribution, *Quid*.
Where there are several Parceners, and he who married the Eldest doth all the Suit to the Lord; then he shall have his Writ de Contributione facienda. The other is in Case of a Statute of Recognizance, where Execution is sued against the Heir only, he shall not have Contribution against a Purchaser, but against another Heir he shall; so one Purchaser shall have Contribution against other Purchasers, and the Heir also.

Contract.

Where the Heir of the Conusor shall have Contribution, and where not.

One Purchasor shall have it against another, and against an Heir.

The Conusors shall be equally charged.

greater Privilege in Law than the Conusor himself.

Where Feoffee shall have an *Audita Querela* for Contribution:

But the Conusor shall not.

How Devisee shall contribute to pay off Mortgage-Money.

Third, the Remainder in Fee two Thirds. *1 Chanc. Cases, 271. Chanc. Rep. 223, 224.*

In what Cases the Heir of the Conusor of him against whom Judgment is given shall have Contribution, and shall not be solely charged, and in what Cases he shall. *3 Rep. 12. b.*

One Purchasor shall have Contribution against another, and against the Heir of the Conusor also. *3 Rep. 12. b. 13.*

The Conusors themselves shall be equally charged, and one of them shall not be solely extended; also the Heir of any of them shall not have

Every Feoffee shall have an *Audita Querela* against the Conusor, to make him contributory to their Charge, if Execution is sued solely against them; yet he shall not have an *Audita Querela* against any of them, to make them contributory to him. *1 Plow. 32. b. Rosse and Pope. ob 12.*

If A. mortgages Lands for 1000 l. and then devises to B. for Life, Remainder to C. in Fee, C. may compel B. to pay his Share of the Mortgage-Money.

1 Chanc. Cases, 224. viz. The Tenant for Life one Third, the Remainder in Fee two Thirds. 1 Chanc. Cases, 271. Chanc. Rep. 223, 224.

Conveyance.

Bargain and Sale.
See Fine.
Recovery.
Uses.

Conveyance, *Quid.*

A Conveyance is a Deed which passes Land from one Man to another.

Conveyance to one by his reputed Name, good.

Aliter, if it be to raise an Use; for then it is void for the Incertainty.

A Conveyance made to one by his reputed Name, altho' he is not the same Person in Law as he is reputed, yet is the Conveyance good; because it appears he was the same Person in Fact, who was intended to take by the Conveyance: But if such a Conveyance be made to raise an Use, then it is not good. *28 April, 1651. B. S.* For a Conveyance to raise an Use is usually made to a Stranger, and not to *cestui que Use*; and therefore if it be uncertain who

Conveyance.

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who is the *cestui que use*, the Conveyance is void for the Incertainty.

A Conveyance cannot be fraudulent in Part, and good as to the rest. 30 Apr. 1650. B. S. For if it be fraudulent and void in Part, it is void in all, for it cannot be divided; because it is made, and is to take Effect, *uno flatu*.

A Conveyance cannot be fraudulent in Part, and good as to the rest.

If I covenant to convey Lands to another, I am bound to do it at my own Charges, except it be otherwise agreed betwixt us. Trin. 1651. B. S. For he is to perform the whole Covenant at his Peril, and the Covenantee is not bound to be assisting unto him in the perfecting thereof.

If a Man covenants to convey Lands, he must do it at his own Charges.

A Covenant to convey according to Draughts agreed upon, the Plaintiff need not to tender Wax: Because the Defendant had taken it upon himself. 1 Lev. 44. Also see there when a Tender of a Conveyance is requisite, and when not.

A Covenant to convey according to Draughts agreed upon, who must tender the Wax.

Where the Bargain and Sale, Recovery and Fine, altho' made, suffered, and levied at several Times, yet by the mutual Consent of the Parties make but one Assurance according to the Original Contract: And therefore every of them tending to perfect the Bargain, none of them shall destroy any Part of it. 2 Rep. 75. a. See 2 Mod. 233.

Where a Bargain and Sale, Fine and Recovery, make but one Conveyance.

The Manner of pleading of a Conveyance, with the Words, *Give, Grant, Release and Confirm*. 3 Lev. 291, 292.

None of them shall destroy any Part of it.

How to plead a Conveyance.

Conveyances have been altered, not so much by the Knowledge of the Learned, as the Ignorance of unskilful Men: The usual Conveyance at the Common Law was by Feoffment and Livery; but if there was a Tenant in Possession, so that Livery could not be made, then the Reversion was granted, and the Tenant always attorned: And upon the same Reason, a Lease and Release was held to be a good Conveyance to pass an Estate; but then the Lessee was to be in actual Possession before the Release.

How Conveyances came to be altered.

The old Conveyance was a Feoffment.

No Livery where Tenant was in Possession.

Afterwards Uses came to be frequent, and Settlements to Uses very common, whereby many Inconveniencies were introduc'd: To prevent which, the Statute of 27 H. 8. was made, by which the Use was united to the Possession; for before, Uses were to be executed by the Rules of Equity, but are now reduc'd to the Common Law, and therefore to be construed by the Rules of Law.

When came Settlements to Uses.

The Use united to the Possession.

Now to be construed by Law.

At the Common Law, when an Estate did not pass by Feoffment, the Vendor made a Lease for Years, and the Lessee actually entred, and the Lessor granted the Reversion to another, and the Lessee attorned.

When Estates passed by Lease for Years, and a Grant of the Reversion, and Attornment of the Lessee.

After.

When Lease and Release at the Common-Law, upon the Entry of the Lessor.

When a Lease and Release by the Statute of Uses, without Entry of the Lessee.

cause the Statute did execute the Lease, and raised an Use presently to the Lessee. Serjeant Moore was the first who practised this Way. *Per North, Chief Justice. 2 Mod. 251, 252.*

Afterwards, when an Inheritance was to be granted, then also was a Lease for Years usually made, and the Lessee entred (as before), and then the Lessor released to him.

But after the Statute of Uses, it became an Opinion, That if a Lease for Years was made upon a valuable Consideration, a Release might operate upon it without an actual Entry of the Lessee; be-

Conviction.

What a Convict and Conviction are.

on is either when a Man is outlawed, or appeareth and confesseth, or else is found guilty by the Inquest. *Crompt. Just. Fol. 9.*

Conviction and Attainder used one for the other.

There ought to be a Summons before Conviction.

A Convict, Convictus, is he that is found guilty of an Offence by Verdict of a Jury. *Staundf. Pl. Cor. 186.* But *Crompton*, out of *Dyer*, 275, says, That Conviction

Conviction and Attainder are often confounded one for the other.

There cannot be a Conviction by Justices of the Peace upon a penal Statute, without a Summons. *Mod. Cases 41, 42.*

Copy.

Part of a Copy of an Office to prove a Deed, not allowed to be given in Evidence.

If upon a Trial you will give part of a Copy of an Office in Evidence to prove a Deed, which Deed is to prove the Party's Title to the Land in Question that gives it in Evidence; if that Part of the Office given in Evidence be not so much of the Office as doth any way concern the Lands in Question, the Court will not admit it to be given in Evidence, 28 Apr. 1651. *B. S.* For though something in the Office may make for him who gives it in Evidence, yet it may, if all the Office be taken together, make against him; and therefore the Court will have it all given in Evidence, *ad informandum conscientiam* and to satisfy the Jury, or else no part of it shall be admitted in Evidence.

Copy.

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A Clause out of a Patent taken from the Chapel of the Rolls cannot be given in Evidence, but you must have a true Copy of the whole Charter examined.

Nor a Clause of a Patent taken from the Chapel of the Rolls.

The Jury upon a Trial at the Bar, may not be admitted to have any Copies of Deeds, or other Writings, which were given in Evidence unto them, away with them from the Bar to consider of their Verdict, which are not under Seal.

Jury not admitted to have Copies of Deeds, &c. that were given in Evidence.

Otherwise of Deeds, &c. under Seal.

28 Apr. 1651. B. S. But all Deeds or Writings under Seal, and given in Evidence they may have, but nothing which was not given in Evidence may they have; for this were to make new Evidence which the Court heard not, which ought not to be; for the Court gives their Direction to the Jury upon the Evidence that is given in Court.

Copyhold and Copyholder.

Admittances.
See } Baron and Feme.
 } Forfeiture.
 } Tenure.

A Copyhold Tenant is he who is admitted Tenant of any Lands within a Manor, that Time out of Mind have been demised and demisable to such as will take the same in Fee, Fee-Tail, or for Life, Years, or at Will, according to the Custom of the said Manor.

What makes a Copyhold Tenant.

The King shall have a Copyhold, which is granted to one in trust for an Alien. *Hill. 23 Car. B. R.*

The King shall have a Copyhold granted in trust for an Alien.

It is a Forfeiture of the Copyhold, for the Copyholder to refuse his Fine, if it be a Fine certain; or to refuse to appear at his Lord's Court, and to do his Service there; for there is a Condition in Law implied in every Copyhold Estate, that the Copyholder must pay his Fine and do his Service upon pain of Forfeiture for not doing it. *Trin. 24 Car. B. R.* But if he refuse to pay a Fine incertain after it is set, it is no Forfeiture; for the Fine may be unreasonable, and the Court is to adjudge of that. *Vide Raym. 42.*

What shall be a Forfeiture of a Copyhold.

A Surrender of a Copyhold to an Use, makes not one a Copyholder, as to Purchase, but as to Descent it is otherwise. 5 Februarii, *Hill. 1649. B. S. Qu.*

Surrender of a Copyhold to an Use, makes not a Copyholder as to Purchase, tho' it does as to Descent.

A Copyhold cannot be surrendered by Attorney without Deed, but one may be admitted by Attorney.

Forfeitures descendible to the Heirs of the Lord.

What Forfeitures are a Determination of the Estate.

Who may take Advantage of the Forfeiture of a Copyhold by Tenant for Life.

The Lord may grant a forfeited Copyhold before Seizure.

Felony is a Forfeiture of a Copyhold.

But *Quere* if Copyholder has his Clergy.

Upon Covenant to surrender to the Use of A. a Surrender to two Copyholders is sufficient.

Copyhold not within the Statute of 12 Car. 2.

Copyholder for Life, attainted of Felony, he in Remainder enters, and held good.

Custom to pay a Fine according to yearly Value, good.

How Customs that go for barring, and Customs that go for maintaining of Copyhold Estates shall be taken.

No Forfeiture to say, if such Services are due you shall have them.

shall be tried by the Law first; this is no Forfeiture.

A Copyholder for Life shall not forfeit the Remainder-Man's Estate.

The Husband of a Copyholder commits a Forfeiture, and dies, his Wife may enter.

Copy and Copyholder.

A Copyhold Estate cannot be surrendered to another by an Attorney without Deed; but one may be admitted to a Copyhold Estate by Attorney without a Deed. 2 Apr. 1650. B. S. For there is Difference betwixt the passing of an Estate, and the receiving of an Estate passed.

What Forfeitures are descendible to the Heirs of the Lord. 1 *Lutw. Ent.* 802, 803, &c.

What Forfeitures are a Determination of the Copyhold Estate. *Idem* 803.

What Persons may take Advantage of the Forfeiture of a Copyhold by Tenant for Life. See 1 *Saund.* 151.

That the Lord may grant a Copyhold forfeited, before Seizure. 1 *Lev.* 26.

That a Copyhold is forfeited by Commission of Felony, *Idem.* 263.

Copyholder convicted of Felony had Clergy; and made a *Quere*, if it be a Forfeiture of his Estate? *Ibidem.*

Upon a Covenant or Agreement to surrender Copyhold to the Use of A. a Surrender into the Hands of two Copyholders is sufficient. *Idem* 293.

That Copyhold is not within the Statute of 12 Car. 2. touching Guardians. 2 *Lev.* 395. 2 *Lutw.* 1189, 1190.

Where a Copyholder for Life was attainted of Felony, and he in Remainder enter'd, and held good. *Lutw.* 94.

Custom to pay a Fine according to the yearly Value, good. *Lutw.* 255.

A Custom which goes in Deprivation or Bar of a Copyhold Estate shall be taken strictly, but where it goes in making and maintaining of a Copyhold Estate, it shall be taken favourably. *Cro. El.* 879. pl. 10.

The Lord requires the Copyholder to do such and such Services, the Copyholder answers that if they are due by Law you shall have them, but it shall be tried by the Law first; this is no Forfeiture. *Larch* 123.

A Copyholder for Life commits Waste, it shall not forfeit the Estate of him in Remainder. *Cro. El.* 886.

The Husband of a Copyholder in Fee commits a Forfeiture and dies, the Wife shall have it again after the Husband's Death. *Cro. Car.* 7. pl. 4. See *Cro. El.* 149. pl. 18.

A Copyholder as to Purchase, but as to Surrender, it is otherwise. *Idem.*

Copy and Copyholder.

315.

A Copyholder for Life forfeited for Non-payment of Rent upon a wilful Refusal; so if Copyholders in Fee do not upon Summons come to the Court it is a Forfeiture, tho' no actual Refusal; so also if they refuse to be of the Homage, or will not make a Presentment. *Mod. Cases* 468.

Non-payment of Rent is a Forfeiture.

So is, not coming to the Court.

So refusing to make a Presentment.

What Forfeiture must be found by the Homage, and what not.

What is a Forfeiture of a Copyhold.

There is a real and personal Forfeiture of Copyhold Lands; a real Forfeiture, as committing Waste, &c. need not to be found by the Homage.

But a personal Forfeiture, as refusing to pay the Lord's Rent, &c. must be found by the Homage. 4 *Leon. Case* 382.

A Copyholder for Life doth forfeit his Copyhold, by committing of voluntary Waste, or cutting down of Timber growing upon the Lands belonging to the Copyhold Tenement; except it be for Reparations of the Copyhold, and a Custom for it: Also for Leasing without a Licence. See Title Licence.

Tenant in Tail of a Copyhold surrenders to the Use of another in Fee; this is no Discontinuance, but the Heir in Tail may enter. 1 *Leon.* 95. *Case* 124. See *Moore, Case* 448, 813. A Surrender of Tenant in Tail is no Discontinuance, unless the Custom be so. *Cro. El.* 148. *pl.* 17; but see also 483. *pl.* 20. See *postea*.

Surrender in Fee of a Copyhold by Tenant in Tail makes no Discontinuance.

A Court-Baron may be held *coram Seneschallo*, as to Admittances; tho' it is usually held before the Suiters, and they are Judges, *viz.* as to the Causes there tried. *Lutw.* 1217.

Before whom Courts-Baron may be held.

A general Warning of a Court within the Manor is sufficient; for if the Tenant himself be not resistant upon his Copyhold, his Tenant may send him Notice of the Court. 1 *Leon.* 104. *Case* 139.

What Notice is requisite for a Copyhold Court.

An Admittance of a Copyholder for Life upon a Surrender is an Admittance of him in the Remainder; and no Fine is due for the Remainder-Man, unless by Custom. 3 *Lev.* 308. 4 *Rep.* 22. *b.* Also the Remainder-Man may after the Death of the Tenant for Life surrender without any Admittance. 4 *Leon. Case* 226. *Cro. El.* 504. *pl.* 29. For the first Part of this Paragraph. *Cro. El.* 662. *pl.* 11. See 5 *Mod.* 306, 307.

Admission of him for Life, is also of him in the Remainder; and no Fine due *sans* Custom.

The Remainder-Man may after the Death of Tenant for Life surrender without Admittance, and good.

Assignees of a Reversion of Copyhold Lands shall take Advantage of the Covenants, *per Statute* 32 *H. 8. cap.* 34. 3 *Lev.* 227, 326.

Assignees of a Reversion of Copyhold, are within 32 *H. 8. cap.* 34.

Tenant for Life of a Copyhold, Remainder in Fee; he in Remainder in Fee may surrender his Estate, if there be not any Custom to the contrary. 3 *Leon. Case* 329.

A Remainder-Man in Fee may surrender his Copyhold.

The Lord of a Manor cannot grant a Copyhold in Reversion without a Custom for it. *March* 8. *pl.* 13. Lord for Life, or a particular Tenant, ha-

A Reversion of a Copyhold, how grantable.

ving

Ving Interest in a Manor may grant Copies in Reversion, altho' not executed in the Grantor's Life. *Moore* 147. *pl.* 292, 236.

Copyholders alledge a Custom, and Freeholders prescribe.

How to prescribe against a Stranger, and how against the Lord.

Fifty Years makes a Customary Estate.

Copyholder for Life is attainted; who shall have the Forfeiture so long as he lives?

3 *Lev.* 94. But 9 *Rep.* 107. *a.* that the Lord shall retain it during the Life of him who commits the Forfeiture, and he in Remainder shall not enter.

Remainder-Man may bring Case against Tenant for Life, who commits Waste.

Fine certain must be tendered before the Admittance.

Otherwise, where it is uncertain, and who are Judges of it.

Land: And for Non-payment of an unreasonable Fine, the Lord cannot enter. 3 *Mod.* 133. 4 *Rep.* 27. *b.* 28. *a.* *Hob.* 135.

Refusing to pay an unreasonable Fine where it is Arbitrary, is no Forfeiture.

The Trees are the Lord's.

the Lord may carry them away, or bring Trover for them: For when they were standing, they were the Lord's, and the cutting of them down gives the Copyholder no Interest in them.

Copyholder for Life can't cut down Timber, tho' a Custom for it; and why.

holder for Life to cut down Timber Trees, which by Intendment had not their Growth in his Time. *Cro. Jac.* 30.

Copyholders must alledge a Custom, and Freeholders prescribe to have *solum & separalem Pasturam*. 1 *Lev.* 268. 2 *Lev.* 178.

Where a Copyholder prescribes against a Stranger, he ought to alledge the Prescription in the Lord; but where he prescribes against the Lord, he ought to lay it by way of Usage. *Cro. El.* 390. *pl.* 12.

The Continuance of fifty Years is requisite to make a customary Estate demiseable by Copy. 3 *Leon. Case* 158. See *Cro. El.* 351, that forty Years is not sufficient.

Copyholder for Life is attainted of Felony, he that hath the next Life enters, then the Copyholder is pardoned: The Forfeiture is not to the Lord, but to the next Tenant for Life in Remainder.

Case lies for him in Remainder against a Copyholder for Life, who commits Waste. 3 *Lev.* 128, 130.

Where the Fine is certain, the Lord may refuse to admit without a Tender of it. *Cro. El.* 779. But where it is uncertain, the Lord is first to admit the Tenant, and then set the Fine: The Reasonableness whereof is to be determined by the Judges, before whom the Cause depends, upon a Demurrer, or by a Jury, upon Proof of the Yearly Value of the

If the Lord demand an unreasonable Fine of a Copyholder where the Fine is uncertain; if the Fine be denied to be paid, it is no Forfeiture. *Cro. El.* 779.

If a Copyholder for Life cuts down Trees, unless for Repairs, and for which there is a Custom,

Copyholder for Life pleads a Custom to cut down Timber Trees, and carry them away at his Pleasure. And held by the greater Part of the Judges, That it is an unreasonable Custom, for Copyholder for Life to cut down Timber Trees, which by Intendment had not their Growth in his Time. *Cro. Jac.* 30.

Copyhold and Copyholder.

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A Copyholder alledges a Custom for all the Tenants to cut down Trees for the Repair of their Copyhold and Freehold Tenements, and to sell the Trees at their Pleasure, and held a good Custom.

4 Leon. Case 371.

It is a Forfeiture at the Common Law for a Copyholder to cut down Trees without a special Custom. Cro. El. 292. pl. 3. 498.

A Copyholder in Fee brings an Action against his Lord upon a Custom that every Copyholder shall have the Loppings of the Pollingers, and says, that the Defendant cut down two Oaks which were Pollingers, and so he lost the Benefit of the Loppings; and by the better Opinion an Action lies.

Cro. El. 629. pl. 24.

A Copyholder may without a Custom cut off the Under-boughs which cannot cause any Waste, but the cutting off of the Top-boughs will cause the Putrefaction of the Trees. Cro. Eliz. 361. pl. 21. Neither can they have such Boots as Tenants for Life or Years, unless by Custom. Cro. Eliz. 5. pl. 3.

The Lord cannot cut down all the Timber-Trees, but ought to leave sufficient for Reparations. 12 Rep. 68. a.

A General Action of Trespass lies by a Copyholder of Inheritance against his Lord, *Quare clausum fregit & arbores succidit*; for Custom hath fixed it to his Estate against the Lord, they being fixed to the Lands, and the Copyholder (*viz.* of Inheritance) may cut them for necessary Repairs. 12 Rep. 68, 69.

Every Copyholder by the Common Law may surrender in Court; and if he can do that by the Common Law, he may make an Attorney to do it as an incident Thing by the Common Law. 9 Rep. 75. a. b. See 1 Leon. 36. Case 45.

A Copyholder surrenders to the Use of J. S. The Lord, without reasonable Cause, refuses to admit him; he cannot enter before Admittance, because he which makes the Surrender, continues in Possession, and not the Lord, and he shall have Trespass against any one who enters. Cro. El. 349. pl. 25. So if a Copyholder surrenders to the Use of his Will, he shall have it during his Life. Ibid. 4 Rep. 23. 28. b.

Baron and Feme Copyholders, to them and the Heirs of the Baron; the Baron dies; the Heir in the Life of the Feme, before Admittance, surrenders into the Hands of the two Tenants; and ruled to be

4 M

A Custom for all the Copyhold Tenants to cut down Trees to repair their Customary and Freehold Estates, and to sell, and held good.

It is a Forfeiture to cut down Trees *sans* special Custom.

Action lies for a Copyholder against the Lord who cut down Pollingers, whereby he lost the Loppings.

May cut Under-boughs without a Custom, but not Top-boughs.

Neither can they have Boots, unless, &c.

The Lord cannot cut down all the Trees.

Where the Copyholder may maintain an Action against his Lord.

Copyholder's Surrender by Attorney, good; tho' no Custom.

Rep. 75. a. b. See

The Surrenderee cannot enter before Admittance.

But the Surrenderor shall continue the Possession.

So it is in the Case of a Surrender to the Use of his Will.

The Heir in Tail in the Life of his Mother, before Admittance, surrenders, and good.

good:

Admittance of Tenant for Life is the Admittance of him in Remainder; and no Fine for him in Remainder,

But there is for him in the Reversion.

The Custom was to grant for one, two or three Lives; a Grant for a Life and a Widow's Estate, is good.

A Custom that warrants a greater Estate, warrants a lesser.

Copyhold Lands are within the Statute of Limitations.

21 Jac. cap. 16.

When Copyholds are within Acts of Parliament, and when not.

Manor, or Tenant; there the general Words of Acts of Parliament shall not extend to Copyholds. 3 Rep. 8. a.

But when an Act is made for the Publick Good, and none of the before mentioned Prejudices may happen, there Copyholds and customary Estates are within the Purview of those Acts. *Ibid.*

Copyhold Lands within 4 D. 7. cap. 2. of Fines and Non-Claim.

19 D. 7. cap. 2.

Where the Widow of a Copyholder shall have her Widow's Estate, and where not.

Death, surrenders his Estate into the Hands of the Lord, to the Use of another, and dies, although the Surrenderee is not admitted, until after the Death of the Surrendoror, yet the Wife shall be barr'd: Because she can claim nothing but her Widow's Estate, upon her Husband's dying seized. So that the Husband must be a perfect Copyholder at the Time of his Death, which was not in this Case; because he had surrendered in his Life-time, and therefore had no Estate in Law left in him at the Time of his Death, out of which her customary Estate could arise. *Hill. 5 W. & M. B. R.*

Where a Woman, who hath a Widow's Estate, sows the Land, and marries, the Lord shall have the Corn.

good: Also if a Surrender be to the Use of one for Life, Remainder in Fee, the Tenant for Life is admitted; this is an Admittance for him in Remainder. *Cro. El. 662. pl. 11.* Because the Fine is intire, and there is no Fine due for him in the Remainder, but there is for him in the Reversion. *Moor, Case 488.*

The Custom of a Manor was to grant Copyhold Estates for one, two or three Lives. A Copy is granted to a Man, *Habend.* for his Life, and to his Wife *durante Viduitate*. Whether that to the Wife was good or no? And held good; for when the Custom warranted the greater Estate, it warranted the lesser. *Cro. Eliz. 323. pl. 11. 373.*

It was adjudged, That Copyhold Lands were within the Statute of 21 Jac. cap. 16. for Limitation of Entry within twenty Years. 35 Car. 2. B. R. *Hall's Case.*

When an Act of Parliament alters the Service, Tenure, or Interest in the Land, or any other Thing in Prejudice to the Lord, Custom of the

Manor, or Tenant; there the general Words of Acts of Parliament shall not extend to Copyholds. 3 Rep. 8. a.

But when an Act is made for the Publick Good, and none of the before mentioned Prejudices may happen, there Copyholds and customary Estates are within the Purview of those Acts. *Ibid.*

Copyhold Lands are within the Words and Intention of the Act, 4 H. 7. cap. 2. of Fines and Non-Claim, and so are Leases for Years. 9 Rep. 105. a.

Where there is a Copyholder, and by the Custom of the Manor, the Wife that he hath at the Time of his Death shall have her Widow's Estate:

If this Copyholder after Marriage, and before his Death, surrenders his Estate into the Hands of the Lord, to the Use of another, and dies, although the Surrenderee is not admitted, until after the Death of the Surrendoror, yet the Wife shall be barr'd: Because she can claim nothing but her Widow's Estate, upon her Husband's dying seized. So that the Husband must be a perfect Copyholder at the Time of his Death, which was not in this Case; because he had surrendered in his Life-time, and therefore had no Estate in Law left in him at the Time of his Death, out of which her customary Estate could arise. *Hill. 5 W. & M. B. R.*

The Husband must die seized.

rendred in his Life-time, and therefore had no Estate in Law left in him at the Time of his Death, out of which her customary Estate could arise. *Hill. 5 W. & M. B. R.*

A Copyholder's Widow, who hath an Estate for her Life during her Widowhood, sows the Land, and then takes Husband: The Lord shall have the Corn, and not the Husband: Because the Estate determined by her own Act, viz. the taking of the Husband. 5 Rep. 116. a.

Where

Copyhold and Copyholder.

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Where a Copyholder may prescribe against his Lord, and where not. *Keilm. 76. a. 77. a.*

Where a Copyholder may prescribe against his Lord, and where not.

If a Disseisor or other Person having a defeasible Title in a Manor, grants a voluntary Estate by Copy, as if the Copyhold was forfeited to him, or escheated to him; or if the Copyholder died without Heir; these Grants shall not bind him who hath the Right after he hath recontinued the Manor; but such Admittances as a Disseisor makes to the Heir of a Copyholder of the Manor, are good; because it is a Thing of Necessity. *1 Rep. 140. b. 4 Rep. 23. b. 24. a.* So Note the Difference between a Grant and Admittance. So of Surrenders of Copyholds in Fee to the Use of another, the Admittances are good. *Poph. 71.*

What Acts of the Disseisor are good, and what not, as to Grants and Admittances.

A Man seized of a Copyhold in Fee in Right of his Wife surrenders it to a Stranger, the Lord admits him; the Husband and Wife die, the Heir enters; and adjudged lawful: For the Surrender made no Discontinuance; and a Diversity was taken between a Surrender of an Estate for Life, and of an Estate in Fee; in the one the Estate is drowned in the Lord by the Surrender, in the other it is not, but is transferred to him to whom it was made. *Poph. 39. Moor, Case 813.*

A Copyholder seized *jure uxoris* in Fee surrenders, it is void.

See a good Diversity between a Surrender of an Estate for Life, and of an Estate in Fee.

Two Joint-Tenants of a Manor; one of them grants a Copyhold; this is void, because he is not *Dominus pro tempore*. *1 Leon. Case 217.*

One Joint-Tenant grants a Copyhold, it is void.

A Woman recovers Dower of a Manor, and hath Copyholds for Lives assigned her; she may keep Courts, and make Admittances. See for this in Title Dower.

Tenant in Dower of a Manor may keep Courts, &c.

A Tenant at Sufferance grants a Copyhold for Life before Entry of the Lessor, this is a void Grant; but Tenant at Will, who hath an Interest, may grant it. *Moore, Case 369.*

Tenant at Sufferance grants a Copyhold for Life, it is void.

But Tenant at Will may.

An Infant grants a Copyhold, and it is good; for the Copyholder is in by Custom. *Noy 41.* So a Presentation to a Church by an Infant is good. *Ibid.*

Infant grants a Copyhold, or presents to a Church, it is good.

Although a Copyholder in Fee hath but an Estate at the Will of the Lord, *secundum Consuetudinem Manerii*, yet Custom hath so fixed and established his Estate, that by the Custom of the Manor it is descendible, and his Heirs shall inherit; and an Heir of a Copyholder may bring a Plaint in the Nature of an Assize of *Mortdauancestor* in the Lord's Court: And upon a Recovery there, a Writ of false Judgment doth not lie; but the Remedy is by Petition to the Lord, and he may, if there be Cause, reverse the Judgment. *4 Rep. 21. a. b. 22. a. 23. a.*

What Estate a Copyholder in Fee hath at this Day.

What Action he may bring.

Where he must sue by Petition to the Lord.

A Copy-

Where a Lord of a Manor is Chancellor in his own Court.

A Copyholder surrenders to the Use of A. in Trust that he shall hold the Land until he hath levied certain Moneys, and that afterwards he shall surrender to the Use of B. the Moneys are levied; A. is required to make the Surrender to the Use of B. and refuses; B. exhibits his Bill to the Lord of the Manor against A. who decrees against A. that he shall surrender, he refuses; now the Lord may seize, and admit B. to the Copyhold. 1 Leon. 2. So also a Court of Equity will compel him to surrender.

Copyhold for Life surrenders to the Lord in Tail, who leases for three Lives at the ancient Copyhold Rent, and held good.

Copyholder for Life surrenders to the Lord in Tail with the Reversion in the Crown; the Lord makes a Lease for three Lives, and the ancient Copyhold Rent and more was reserved; two Questions were made.

32 H. 8. cap. 28.

1. If the Land shall be said to be usually demised within 32 H. 8. cap. 28 being never demised before but by Copy; and held that it shall.

2. If this Copyhold Rent shall be said to be the ancient Rent within the Statute; and held that it shall. Moor, Case 1050.

Where he may have Trespass against his Lord.

Also if a Copyholder paying his Services be ejected by his Lord, he shall have Trespass against him. 4 Rep. 22. a.

Refusing to perform his Services, is a Forfeiture.

But if a Copyholder refuses to make and perform his Services, it is a Breach of the Custom, and a Forfeiture of his Estate. 4 Rep. 21. b. So also if he refuses to pay his Rent. 3 Leon. 108.

An Attorney may es-
soin, but cannot do Suit
and Service.

A Person by Letter of Attorney may es-
soin for a Copyholder, but cannot do the Services for him;
for none can do the same but the Tenant himself.
1 Leon. 104. Case 139.

How Discent of the
Lands shall be.

When Custom hath made such Inheritances that the Land shall be discentible, the Law shall direct the Discent according to the Rules of the Common Law, as Incidents to every discentible Estate, and there shall be a *Possessio Fratris*; but such Inheritances shall not have any other Collateral Qualities, which do not concern the Discent of the Inheritance, than other Inheritances of the Common Law; and therefore such Inheritances shall not be Affets to bind the Heir, nor the Wife be endowed, nor a Tenancy by Courtesie. Cro. Eliz. 361. pl. 22. Nor shall a Discent take away the Entry, &c. unless there are particular Customs for these Matters. 4 Rep. 22. a. 23. a.

Possessio Fratris.

Shall not be Affets.

Nor Tenant by Cour-
tesie.

Nor Dower.

Nor Discent to toll
Entry.

Copy and Copyholder.

The Heir of a Copyholder in Fee may enter, and take the Profits, and bring Trespass before Admittance, and his actual Possession before Admittance shall make a *Possessio Fratris*; if there be a Custom for it, he may also surrender before Admittance: But this shall not prejudice the Lord of his Fine due upon the Discent. 4 Rep. 22. b. 23. a. He may also bring Trespass before Admittance. See 4 Rep. 24.

The Heir at Law of a Copyholder makes a Lease for a Year warranted by the Custom; it is good before Admittance, but it is not so in the Case of a Surrender. *Moor, Case 813.*

A Copyholder dies, the Lord admits a Stranger; the Heir may enter, and upon a Re-entry bring Trespass without Admission. *Noy 172.*

The Heir of a Copyholder may enter and bring Trespass before Admittance. *Cro. Eliz. 90. pl. 17.* because he is in by Discent. *Litt. Rep. 234.*

How the Heir of a Copyholder may plead his Title per Discent. 4 Rep. 22. b. 24. b.

If a Copyholder in Fee dies seized, and the Lord admits a Stranger, who enters, he is but Tenant at Will, and not a Disseisor to the Copyholder by Discent, because he comes in by the Assent of the Lord. 3 Leon. Case 274.

If a Copyholder for Life surrenders to another in Fee, it is no Forfeiture; for this passes by Surrender to the Lord, and not by Livery. 4 Rep. 23.

If the Custom be to grant Copyhold Lands in Fee, they may be granted in Tail, or for Life also. 4 Rep. 23. a.

When a Surrender is made to the Use of a Will, the Fee-Simple remains in the Surrenderor, and not in the Lord. 4 Rep. 23. 28. b. *Cro. Eliz. 349. pl. 148. pl. 17.*

If a Man be seized of Copyhold Lands, and devises them by his Will, nothing passes by the Devise, unless he hath first made a Surrender to the Use of his Will. *Dal. 76. pl. 3.*

Every Copyhold Estate stands upon two Pillars: The one, That the Land be Parcel of the Manor; the other, That it be demised and demisable Time out of Mind. 4 Rep. 24. Copyhold Lands cannot be made at this Day. *Ibid.* Also a Copyhold kept in the Lord's Hands is still demisable. 2 Keb. 232.

Nothing can be granted by Copy but what is Part of a Manor, and therefore Tithes cannot; they can only pass by Grant, not by Copy. *Per Poph.*

Heir of a Copyholder may enter before Admittance, and also surrender: But the Lord shall have his Fine.

Heir of a Copyholder may make a Lease, but not surrender before Admittance.

And may enter and bring Trespass before Admission.

The Heir of a Copyholder may enter and bring Trespass before Admittance.

How the Heir of a Copyholder may plead his Title by Discent.

One who is admitted by the Lord, is not a Disseisor of the Heir of the Copyholder.

Copyholder for Life surrenders in Fee, it is no Forfeiture.

Custom to grant Copyhold Lands in Fee, they may be granted in Tail, or for Life.

Upon a Surrender to the Use of a Will, the Fee remains in the Surrenderor.

Devise of a Copyhold void without a Surrender to the Use of his Will.

Copyhold Land must be part of a Manor, and demised and demisable.

Tithes cannot be granted by Copy.

But *Gawdy* doubted if it had been so used Time out of Mind. *Cro. El.* 814. pl. 3. *Moor, Case 844.*

Underwood, Fair, Market, Tithes, Piscary, may be granted by Copy, if there be a Custom for it.

Underwood may be granted by Copy, if there be a Custom for it: So may a Fair, Market, Tithes, or Piscary. *Moor, Case 480. 844.*

A Copyhold is not destroyed by Severance from the Manor.

Custom hath so fix'd the Estate of a Copyholder, that by the Severance of the Copyholder from the Manor the Copyhold is not destroyed; but the Copyholder must pay his Rent to the Feoffee, and also Heriots, &c. but not Suit of Court or Fine for Alienation; for he can neither surrender nor alien,

How it stands then.

nor can the Feoffee make any Grant or Admittances to it. *4 Rep. 24. b. 25. a. 26. b.*

Where a Copyhold shall be extinct.

If a Copyholder takes a Lease of the Manor, his Copyhold is extinct. *Cro. Eliz. 7. pl. 5.*

The Husband lets a Lease of his Wife's Copyhold Estate, Part of her Manor, this shall not destroy the Custom.

Baron seized of a Manor in the Right of his Wife, let a Copyhold Parcel of it for Years by Indenture, and died; this shall not destroy the Custom as to the Feme, but after her Husband's Death she may demise it by Copy, as before. *Cro. Eliz. 459. pl. 7.*

A Copyholder cannot surrender a Reversion and leave a particular Estate in himself.

A Copyholder in Fee surrenders the Reversion of his Copyhold after his Death, and so leaves in himself a particular Estate; this is naught. *Cro. El. 29. pl. 1.*

The Heir at Law releases to the Copyholder in Possession, it is good.

The Heir at Law, or he who hath the Right, releases to the Copyholder, who is admitted, and in Possession: This Release is a good Bar. *4 Rep. 25. b.*

Surrender out of Court must be presented in Court, and to be as it really is.

A Surrender out of Court ought to be presented in Court; and if the Surrender is presented to be absolute, whereas it is upon Condition, it is void. *4 Rep. 25. a.*

Lessee of a Copyholder for Years may bring an Ejectment.

Lessee of a Copyholder for a Year may maintain an Ejectment. *4 Rep. 26.*

The Lord may make Admittances any where out of his Manor, but his Steward cannot.

The Lord of a Manor may make Grants or Admittances of a Copyhold any where out of the Manor, but his Steward cannot. *4 Rep. 26. b.* Nor can the Steward hold a Court out of the Manor but by Custom. *4 Rep. 27. a.*

What the Grantee of the Inheritance of the Copyholds may do.

If the Lord grants the Inheritance of his Copyholds to another, the Grantee may hold such Courts for the Copyhold Tenements only, as his Lord might have done, and in such Courts there

May keep Courts.

is no need of Freeholders. *4 Rep. 26. b.* And this is not like the Case of a Grant of a single Copyhold. *4 Rep. 27. a.*

Copyhold and Copyholder.

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Copyholder for Life takes a Husband, who commits Waste contrary to the Custom of the Manor, and dies, the Wife's Estate is forfeited; but if a Stranger had done it without his Consent, it had not. 4 Rep. 27. a.

Where the Husband forfeits the Wife's Estate.

Where the Fines of Copyholders upon Admittance are uncertain, if the Lord exacts unreasonable Fines, and the Copyholder denies Payment, it is no Forfeiture, and shall be determined by the Court upon a Demurrer, or Evidence to a Jury. 4 Rep. 27. b. Cro.

No Forfeiture to refuse Payment of an unreasonable Fine.

Eliz. 351. pl. 3.

It must be upon a Refusal to perform his Services, or a wilful Non-payment of Rent, or Absence from Court, which is a Forfeiture. Cro. Eliz.

What makes a Forfeiture.

A wilful Refusal to pay a reasonable Fine is a Forfeiture, where the Fine is arbitrary at the Lord's Will, and the Jury are to try the Reasonableness of it. Cro. Eliz. 351. pl. 3.

The Jury are to try the Reasonableness of it.

Several Copyholds with several *Habendums*, and several *Reddendums* were granted by one Copy; the Copyholder committed Waste in one of them: It was held that they are several Grants, and as several Copies, and that the Forfeiture of the one is not the Forfeiture of the others. Cro. Eliz. 353. pl. 10.

Several Copyholds granted in one Copy; a Forfeiture of one is not a Forfeiture of the others.

A Copyholder makes a Lease Parol for three Years, to commence at *Michaelmas*; the Lessee died before *Michaelmas*; and adjudged to be a Forfeiture, although but a Lease Parol, and to begin at a future Day, and the Lessee had not entered. Cro. Eliz. 498. pl. 19. 499.

A Lease Parol to commence at a future Day, and no Entry of the Lessee, yet adjudged a Forfeiture of a Copyhold.

Note, The Lord may take Advantage of a Forfeiture of a Copyhold without the Presentment of the Homage; for the Presentment is not of Necessity, but for the Lord's better Instruction of his Title. Cro. El. 499.

The Lord may take Advantage of a Forfeiture without a Presentment of the Homage.

A Copyholder for Life cuts Timber, the Copyhold being out of Repair; the Timber was of no great Value, and insisted, that it was intended for Repairs: The Lord Keeper thought this to be no wilful Forfeiture (though found a Forfeiture upon a Trial at the Assizes in an Ejectment) and upon an Issue at Law directed whether the primary Intention in felling the Timber was to do Waste, it was found that it was not; and decreed, that the Lord should deliver the Possession to the Copyholder and account for the mean Profits. Chanc. Rep. 95, 96.

Where a Copyholder for Life was relieved after a Verdict for a Forfeiture for committing of Waste.

An Action lies for a Copyholder of Inheritance against the Lord for cutting down of two Pollards, where the Copyholders by Custom have used to have the Shrowds and Tops of all Pollards growing upon their Copyholds. Moor, Case 727.

Case lies for him against his Lord for cutting down Pollard Trees.

A Copy-

An escheated Copyhold kept many Years in the Lord's Hands may be granted by Copy.

A reasonable Time for paying a Fine uncertain, but Fine certain is payable presently.

but otherwise it is in case of Fines certain. It must be demanded

No Fine is due until Admittance.

Denying Payment is a Forfeiture.

The Copyholder shall be in by the Surrender, not by the Admittance.

is admitted shall have but for his Life, for he is in by force of the Surrender.

May surrender to the Use of his Wife.

A Surrender out of Court: Surrendor dies before Admittance.

So where Surrenderee dies.

A Copyholder who agrees to surrender, stands intrusted for the Mortgage.

A Surrender void for want of a Presentment, where made good.

A Grant *durante Viduitate*.

A Steward may be retained by Parol.

What Acts a Steward, who keeps a Court without an Authority, may do, and what not, and why.

favours Acts done by one in a reputed Authority, and the inferior shall never enquire

Copy and Copyholder.

A Copyhold that is escheated, and hath been in the Lord's Hands for divers Years, may be granted over by Copy by the Lord himself. *Cro. Eliz.*

699. pl. 12.

Although where Fines are uncertain, if the Lord assesses a reasonable Fine, and requires the Tenant himself to pay it, he is not bound to pay it presently, but shall have a convenient Time for it;

but otherwise it is in case of Fines certain. 4 Rep. 27. b. 28. a. *Nate*, Hob. 135. *Moor*, Case 851.

No Fine is due to the Lord, either upon a Surrender or Discent, until Admittance. 4 Rep. 28. a.

But if afterwards the Tenant denies to pay the Fine, it is a Forfeiture. *Ibid.* See *Cro. Eliz.* 351. pl. 3.

Where a Copyholder surrenders to the Lord to the Use of another for Life, and the Lord makes the Admittance to him and his Heirs; yet he who is admitted shall have but for his Life, for he is in by force of the Surrender. 4 Rep. 28. b. 29. b.

A Copyholder may surrender to the Use of his Wife. 4 Rep. 29. b.

Where a Surrender is made out of Court, and the Surrendor dies before Admittance in Court; yet the Presentment after his Death, by the Custom of the Manor, is good: So if the Tenant to whom the Surrender is made, die, yet if it be presented upon good Proof, it is good. 4 Rep. 29. b. See *Chanc. Rep.* 170, 171.

A Copyholder who hath agreed to mortgage Lands, stands trusted for the Mortgage. *Chanc. Rep.* 170, 171.

A Surrender void for want of Presentment made good against a voluntary Disposition. *Chanc. Rep.* 171.

If the Custom of a Manor be to grant for Life, a Grant to a Woman *durante Viduitate*, is good. 4 Rep. 30. a.

A Lord of a Manor may retain his Steward by Parol, and he shall continue so until countermanded. 4 Rep. 30. a. b.

Acts done by one who keeps a Court as Steward without an Authority, if they come in by Presentment of the Jury, or of Necessity, are good, as the Heir upon a Presentment or Admittance by a Surrender to an Use. *Cro. El.* 699. pl. 13. The Law favours Acts done by one in a reputed Authority, and the inferior shall never enquire if his Authority be lawful. *Ibid.*

Copyhold and Copyholder.

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One joint Copyholder releases to his Companion; this is good without Surrender and Admittance. *Wynch 3.*

One joint Copyholder releases to the other, it is good.

A Surrender of a Copyhold to the Use of a Will taken by the Deputy of a Deputy-Steward was adjudged to be good after great Deliberation. *Pasch. 5 Anna in B. R. See Cro. Eliz. 48. pl. 2.*

A Surrender taken by a Deputy of a Deputy-Steward, and good.

A Woman shall by Custom recover Dower of Copyhold Lands, and shall also recover Damages, but shall not bring Debt for them; but the Remedy must be in the Court of the Manor, or in Chancery. *4 Rep. 30. b.*

A Woman may have Dower by Custom.

What Remedy for her.

Underwood growing upon Parcel of a Manor, may by Custom be granted by Copy, and so may a Fair. *4 Rep. 31. a.*

What may be granted by Copy.

If a Copyhold Estate be forfeited, or escheat to the Lord, or otherwise come into the Lord's Hands: If the Lord leases it for Years or Life, &c. this can never be again granted by Copy, for during those Estates it is not demised or demisable by Copy: But if the Lord keeps the Lands in his own Hands, or demises them at Will, he may re-grant this at his Pleasure. *4 Rep. 31. a. 3 Leon. Case 158. Fol. 108.*

What will extinguish a Copyhold Estate.

Where the Lord may re grant.

When a Copyholder prescribes, he must prescribe in the Name of the Lord of the Manor, viz. That the Lord of the Manor and all his Ancestors, and those whose Estates he hath, have had Common in loco in quo, &c. for himself and his Tenants at Will: This is when the Copyholder claims Common in antient Soil; but when he claims it in his Lord's Soil, then he must alledge, That within the Manor there is such a Custom, &c. and not to plead it by way of Prescription; for Prescription is personal, and made in the Name of certain Persons and their Ancestors, and those whose Estates, &c. But Custom is local, and alledged in no Person. *4 Rep. 31. b. 32. a.*

How a Copyholder must claim Common in the Soil of a Stranger.

How in the Lord's Soil.

Prescription, what.

Custom, what.

A Copyholder in Fee dies, his Heir being beyond Sea; the Lord holds Courts, and makes Proclamations, and seizes for want of a Tenant; then the Heir, as soon as he comes to England, applies to the Lord for Admittance, which he refuses; and held to be no Forfeiture: So likewise in the Case of an Infant, *non sane Memorie*, or Man in Prison, or disseised when beyond Sea.

Heir of a Copyholder beyond Sea shall not be barr'd, if he claim as soon as he comes to England.

So, in case of *Non Compos*, Infancy, &c.

But if they went after, it was attach'd, *aliter*.

But if the first Proclamation had been made, and he had afterwards gone beyond Sea, he shall be bound: So if a Man be disseised, and afterwards he goes beyond Sea, he shall be bound. *8 Rep. 100. b. 101. a.*

If a Copyholder dies, his Heir within Age is not bound to come to any Court during his Infancy to pray Admittance, or tender his Fine; and that if

The Heir of a Copyholder shall not be hurt during his Infancy.

the Death of his Ancestor be not presented, nor Proclamation made, he is in any Mischief, tho' of full Age. 3 *Leon. Case* 294.

What shall be a Forfeiture.

Non-payment of the Lord's Rent, is a Forfeiture.

A License to let for twenty Years, is good for ten.

Licence to a Copyholder for Life to lease for five Years, *fi. &c.*

Leases for five Years absolutely, and good.

A Surrender, and no Estate mention'd, the Lord may grant in Fee.

Where the Heir of a Copyholder shall take by Purchase, and not by Discent.

No Estate-Tail of Copyhold - Lands, and why.

all were Fee-Simple; and after this Statute it cannot be by Usage, because it is within the Time of Limitation. *Poph.* 34.

It may be intailed by the Equity of *W. 2.* not by Custom.

There cannot be a Tenancy in Tail of a Copyhold without a Custom.

A Surrender shall make a Discontinuance.

The Demand of Rent or a Fine, so as to make a Forfeiture, must be of the Person of a Copyholder. *Hob.* 135.

That Non payment of the Lord's Rent upon a Demand is a Forfeiture. See *Hob.* 135. 4 *Rep.* 27. a. 8 *Rep.* 92. a.

If the Lord license his Copyholder to let for twenty Years, he may demise for any Term under twenty Years.

If the Lord licenses a Copyholder for Life to lease for five Years, if he shall so long live; he leases for five Years generally, without saying, if he shall so long live, yet this is a good Pursuance of the Licence; for the Lease is determinable by his Death. *Danv. Part* 1. 669. *Cro. Jac.* 436. *Poph.* 105. *Contra*, in the Case of a Copyholder in Fee. See Title Licence.

A Custom that where a Copyholder surrenders his Estate to the Use of another, and names no Estate, that the Lord may grant it in Fee, is good. *Cro. Eliz.* 395. pl. 15.

Where a Surrender is to the Use of the Copyholder for Life, and afterwards to another in Tail, the Remainder to the right Heirs of the Surrenderor, his Heir shall have it by Discent. *Contra*, where the Surrenderor hath not an Estate for Life or in Tail limited to him, for there his Heir shall enter as a Purchaser. 1 *Leon.* 101. *Case* 132.

An Estate-Tail is wrought out of Copyhold Lands by the Statute of *W. 2.* otherwise it cannot be; for by Usage it cannot be maintained, because no Estate-Tail was known before that Statute, but

A Copyhold may be intailed by the Equity of the Statute of *W. 2.* without Custom, and it is not intailed by Custom. *Moor, Case* 488.

There cannot be a Tenancy in Tail of Copyhold Lands, unless there be a Custom for it: Adjudged also that a Surrender shall make a Discontinuance, but there must be a Custom for it. *Cro. Eliz.* 148. pl. 17. *Cro. Eliz.* 717. See 907. *Co. Litt.* 60. b. *Cro. El.* 148. pl. 17. 380. pl. 32. Also a Recovery not warranted by the Custom is a Discontinuance, which cannot be defeated by Entry. *Cro. El.* 391. pl. 14. 392.

That

Copyhold and Copyholder.

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That the Surrender of a Feme Covert made before two customary Tenants, where she was *sola & secrete examinata*, according to the Custom, shall bind her. *Cro. El. 717. pl. 43.*

A Feme Covert's Surrender before two customary Tenants is good, if a Custom for it.

Copyholder in Fee surrenders in Fee upon Condition for Performance of Covenants; the Surrenderee is admitted, and then surrenders to another upon Condition; the Surrenderee performed none of the Conditions; the Surrenderor enters, and dies seised: Adjudged, that by the Entry of the Surrenderor both the Surrenders are defeated. *Cro. El. 239. pl. 6.*

A Surrender upon Condition, the Surrenderee surrenders to another upon Condition; the Conditions are broken, the Surrenderor enters and defeats them.

Coroner.

A Coroner is an ancient Officer of Trust, chosen at the County Court, and is of great Authority; and upon the Death of the King continues in his Office.

A Coroner, what he is.

A Coroner ought to have five Qualifications.

The several Qualifications which a Coroner ought to have.

1. That he should be *probus Homo*.
 2. *Legalis Homo*.
 3. Of sufficient Understanding and Knowledge.
 4. Of good Ability and Power to execute his Office.
 5. Of Diligence and Intendance for the Execution of his Office.
- Inst. 174.*

He is to enquire by a Jury of all Treasure Trove, and who are the Finders, or who is suspected thereof.

He is to enquire of Treasure Trove.

4 C. 1. Stat. 2.

Where any Person shall be indicted for Murder or Manslaughter, upon an Inquisition taken before the Coroner, he must put into Writing the Effect of the Evidence given to the Jury before him, and may bind by Bond or Recognizance all those who give Evidence in any material Thing touching the Offences or Accessories thereunto, to appear at the next general Goal-Delivery, to give their Evidences, which must be certified to the Court with the Inquisition; the Penalty is, to be fined at the Pleasure of the Court.

The Coroner's Duty upon an Inquisition found before him.

1 & 2 P. & M. cap. 13. sect. 5.

Coroners in London and Middlesex, and in other Cities, Boroughs and Towns Corporate, may bail Felons and Prisoners in such Manner as hath been heretofore accustomed. *Stat. 6.*

Where he may bail Prisoners.

A Coroner

What Fees the Coroner shall have in some Cases.

3 H. 7. cap. 1.

Where they shall have no Fees.

1 H. 8. cap. 7.

Forfeiture of forty Shillings. Justices of Assize and Justices of the Peace may enquire thereof, and determine the same. 1 H. 8. cap. 7.

A Writ of Assize directed to the Coroners for Cofinage with the Sheriff.

Also to the rest of the Coroners, for that one of them was the Defendant's Servant.

Where Writs Original or Judicial shall be directed to the Coroners.

Where he may commit to Prison.

A *Fugam fecit* binds the Goods.

Where a Coroner's Inquest was traversable.

Coroner's Inquest was traversable in this Case, though not in a *Fugam fecit*, and the Inquisition was set aside; and the Death ordered to be presented at the next Assizes, and the Inquisition to be traversed, and tried there. 2 Lev. 140.

Where not.

How Coroners must act ministerially, and how judicially.

Ministers must all join, but as Judges they may divide; but being after a Verdict, the Statute of *Jeofailes* help'd it, by the Words of *imperfect and insufficient Returns by Sheriffs or other Officers*. Hob. 70. See 3 Lev. 399.

A Coroner shall have thirteen Shillings and four Pence for his Fee upon every Inquisition taken upon the View of the Body slain or murder'd, of the Goods of him who is the Slayer or Murderer by 3 H. 7. cap. 1.

But where a Man happens to be slain by Misadventure, and not by any Man's Hand, he must upon Notice, without Fee, enquire thereof, upon Forfeiture of forty Shillings. Justices of Assize and Justices of the Peace may enquire thereof, and determine the same. 1 H. 8. cap. 7.

A Writ of Assize was directed to the Coroner, because the Sheriff was of Kin to the Defendant: And also to all the rest of the Coroners, because A. B. one of the Coroners, was Servant to the Defendant. *Wymbish vers' Domin. Willoughby*. 1 Plow. 73. a.

Where Original or Judicial Writs shall be directed to the Coroners in Default of the Sheriff. *Ibid*. See the whole Case.

A Coroner may commit any Person to Prison, who is by his Inquisition found guilty of the Death of any Person.

A Flight found by the Coroner's Inquest is final, as to the Forfeiture of Goods. Hob. 318. Because not traversable. 2 Lev. 140.

A Coroner's Inquest returned, That A. B. *seipsum emergit*, instead of *mersit*, & sic *seipsum murdravit*, and naught: And per Hale. Anciently the Coroner's Inquest was traversable in this Case, though not in a *Fugam fecit*, and the Inquisition was set aside; and the Death ordered to be presented at the next Assizes, and the Inquisition to be traversed, and tried there. 2 Lev. 140.

A Coroner's Inquest was traversed by Executors, upon the finding of a *Felo de se*, not upon a *Fugam fecit*. 2 Lev. 152.

A *Venire* was returned by two Coroners, the *Disstringas* by three, where there were then four: This is Error at the Common Law, for Coroners as Ministers must all join, but as Judges they may divide; but being after a Verdict, the Statute of *Jeofailes* help'd it, by the Words of *imperfect and insufficient Returns by Sheriffs or other Officers*. Hob. 70. See 3 Lev. 399.

Corporation.

See { **By-Laws.**
Charitable Uses.
Disability.
Mandamus.
Misnomer.
Quo Warranto.
Warrant of Attorney.

A Corporation is an artificial Body constituted of several Members, like a natural Body: It is united by its Franchises, and is called a Franchise by the Letters Patents of Incorporation; for all Corporations were made by Letters Patents, or Acts of Parliament; tho' in some Places they prescribe to them, which in it self implies a former Grant. 4 Mod. 55.

A Corporation, *Quid.*

If a Corporation become so poor, that it is not able to defray the Publick Charges, incident unto it as a Corporation; it is fit that the Corporation be seized into the King's Hands. *Hill. 21 Car. 1.* For the Corporation becomes useless, and dishonourable to the Realm.

A Corporation not able to defray the incident Charges, ought to be seized into the King's Hands.

If a Corporation doth neglect to elect such Officers as they ought to elect by their Charter, or if they make a false Election not warranted by their Charter; this is a Forfeiture of their Corporation. *Hill. 21. Car. B. R.* For the Charter doth imply Conditions in Law for them to perform, and by the not performing of them, the Charter is forfeited.

Corporation not duly electing their Officers; forfeit their Charter.

The Corporation of the City of London is to answer for all particular Misdemeanors which are committed within any of the Courts of Justice within the City; and for all other general Misdemeanors committed within the City. *Trin. 22 Car. B. R.* So I conceive it is of all other Corporations: If it should be otherwise, the Intent of their Charter, which is for the good Government of the City, would prove pernicious and destructive to the Realm.

Corporation of London to answer for Misdemeanors, &c.

Body Politick is created by Letters Patent.

originally derive its Authority by Grant from the King; for the King is the Head of the Commonwealth, and all the Commonwealth

The Commonwealth in respect of the King is but one Corporation.

Custom of London, where to be tried.

Corporation cannot be attached for not obeying an Award.

Inns of Court, no Corporation.

Corporation cannot disfranchise an Attorney for refusing to swear not to sue a Freeman out of the Town.

What they may do without Deed, and what not.

May take a Grant for the Benefit of their Members.

Are the Parties interested in the Revenues of the Corporation.

May prescribe for Common in gross.

Attachment lies not against a Corporation.

May turn out a Town-Clerk, but *Quare* of a Recorder.

Pleasure. *Ibid.* 188. Pl. 70.

An Alderman cannot be turn'd out.

A new Charter merges not any of the ancient Privileges of a Corporation.

Corporation may use them as before. *Ibid.* 439. vide 2 Lut. 1335, 1336.

A Body Politick is a Creature of the King, created by Letters Patents. *Hill. 22 Car. B. R.* For though a Corporation may be by Prescription, yet it shall be intended that such a Corporation did originally derive its Authority by Grant from the King; for the King is the Head of the Commonwealth, and all the Commonwealth in respect of him is but as one Corporation, and all other Corporations are but as Limbs of a greater Body.

Where the Corporation of London are Plaintiffs in a Cause where the Custom of London comes in Question; this shall be tried out of the City.

A Corporation cannot be attached for not obeying an Award. 2 *Keb.* 1. *Plowd.* 1. Otherwise if it had been between A. B. and C. who compromise for the Corporation.

Inns of Court or Chancery cannot be sued as a Corporation. 1 *Keb.* 135. Pl. 64.

That a Corporation cannot disfranchise an Attorney for refusing to swear (as is used in London) not to sue another Freeman at Common Law out of the Town, *Vide* 1 *Keb.* 690. Pl. 4.

For what Things a Corporation aggregate may do without Deed, and what not, *Vide* 2 *Saund.* 305.

A Corporation may take a Grant for the Benefit of their particular Members. 1 *Saund.* 344.

The Members of the Corporation are the Parties interested in all the Revenues and Privileges of the Corporation. *Ibid.*

A Corporation may prescribe for Common in gross, for the Benefit of their particular Members, but not for Common in gross without Number. *Ibid.* 344, 345, 346.

Attachment doth not lie against a Corporation. *Raym.* 152.

A Corporation that hath a Patent to make a Town-Clerk *durante beneplacito* of the Mayor and Aldermen, may turn him out at their Will and Pleasure. *Ibid.* 188. But it is doubted of a Recorder. 2 *Keb.* 461. Pl. 70.

But an Alderman cannot be turn'd out. *Ibid.*

Where Time out of Mind, a Corporation had Power to remove an Alderman, for reasonable Cause, tho' they take a new Charter, wherein there is no such Power given, yet the same Power still remains; for the new Charter doth not merge or extinguish any of the ancient Privileges, but the Corporation may use them as before. *Ibid.* 439. vide 2 Lut. 1335, 1336. That

Corporation.

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That a Corporation cannot disfranchise on Breach of a By-Law. 2 *Keb.* 15 *Pl.* 34.

A Corporation cannot exclude Foreign Traders. 2 *Keb.* 464. *Pl.* 49.

Their Acts are by the major Part.

No Member can be a Witness in an Action *sur le Case* brought by them for Toll. 3 *Keb.* 12. *Pl.* 6.

Their Witnesses must be disfranchised, but he cannot surrender by Consent. *Ibid.* 295. *pl.* 26.

See 2 *Cro.* 236, 238. where the Court declared they ought to be admitted.

An Obligation being sealed with the common Seal of a Corporation, and the Mayor signs it, the Corporation is afterwards dissolved, the Mayor is suable. 2 *Lev.* 137.

That every Member may prescribe in the Right of the Corporation. 2 *Lev.* 253.

Which way a Debt may be recovered from a Corporation that hath nothing whereby it may be summoned. *Chanc. Rep.* 204.

A Corporation may be dissolved, for it is created upon a Trust, and if that be broken, 'tis forfeited: But a Judgment of Seizure cannot be in such Case; for if it be dissolved, to what Purpose shall it be seized? 4 *Mod.* 58.

In Colleges and Corporations, the major Part of the Members ought to give their Voices *in Numero distincto*. *Dav. Rep.* 48. *a.*

A Disfranchisement ought to be founded upon an Act, which is against the Duty of a Citizen or Burghers, and to the Prejudice of the City or Burrough, and against his Oath of a Freeman: For although he shall not be charged in any judicial Court for the Breach of an Oath, which he takes when he comes to be a Minister, Citizen, Burghers, &c. Yet if he doth an Act contrary to his Duty, and to the Prejudice of the Corporation, this doth very much enforce his Amotion, and is a Condition in Law tacitely annex'd to his Freedom, and he may be disfranchised if he breaks them. 11 *Rep.* 98. *a.* *Vide* Title *Mandamus*, and 5 *Mod.* 257, 258, 259.

But Words of Contempt, or *contra bonos mores*, though against the Chief Officers, are no good Causes of Disfranchisement, but are good Cause to commit him until he shall find Sureties for his Good Behaviour. So also if he conspire to do any thing contrary to the Duty or Trust of his Freedom: The Matter for which there shall be a Disfranchisement, ought to be an Act or Deed committed, and not a Conation, or going about to do an Act which may be repented of. 11 *Rep.* 98. *b.*

Corporation cannot disfranchise for Breach of a By-Law.

Cannot exclude a foreign Trader.

They act by Majority.

No Members can be a Witness in an Action for Toll.

Their Witnesses must be disfranchised, but cannot surrender by Consent.

But see 2 *Cro.* where the Court declared *contra*.

Where the Mayor is suable when the Corporation is dissolved.

Each Member may prescribe in the Right of the Corporation.

How to recover a Debt of a Corporation.

It may be dissolved, and why.

How Corporations to give their Votes.

What is a good Cause for the Amotion of a Citizen or Burghers.

Words of Contempt, though against the chief Magistrate, no Cause,

But he may be bound to his Good Behaviour on it.

A Disfranchisement cannot be without an Act done; a Conation is not sufficient.

Where

One who hath a Freehold in a Corporation, as is an Alderman or Freeman, cannot be removed without good Cause.

But a Common Council Man may be removed *ad libitum*.

A Member of a Corporation fined 20*l.* for not making of a customary Dinner, and held good.

and adjudged a good Custom. *Cro. Jac. 555. pl. 17.* A Custom for the Lord Mayor and Court of Aldermen to commit a Citizen for not accepting of the Livery, was held a good Custom; it being for the good Government of the City. *5 Mod. 320.*

In case of a sole Corporation, no Chattel shall go in Succession.

But Executors or Administrators must have them.

But otherwise of a Dean and Chapter, or other Corporation aggregate.

The Successor, and not the Predecessor's Executors, shall have the *Sci. fa.* upon a Judgment in Debt.

Suit is given to the College by a private Statute, and is to be brought by the President for the Time being, and the Law shall transfer the Duty to the Successor. *Cro. Jac. 159. pl. 13.*

What Corporations may command without Writing, and what not.

A Devise of Land to a Corporation by the Master of the Corporation is void, and why.

The Corporation shall be answerable for their Officer.

How a Corporation must prescribe.

Where a Man is an Alderman or Freeman of a Corporation he cannot be removed from his Freedom or Place without good Cause, and a Custom to remove them *ad libitum* is void; because the Party hath a Freehold therein: But to be of Counsel to a Corporation, *viz.* one of their Common Council, is a Thing colateral to a Corporation; and if there be such a Custom he may be removed *ad libitum*. *Cro. Jac. 540. pl. 8.*

A Custom to elect every Year two of the Burgesses to such an Office, who used to make a Feast upon such a Day, and the Defendant being elected refused to make the Feast; whereupon he was fined 20*l.* and committed until he paid his Fine,

In case of a sole Corporation, be it by Charter or Prescription, as Bishop, Parson, Vicar, Master of an Hospital, &c. No Chattel either in Action or Possession shall go in Succession, but the Executors will have them. But in Case of a Corporation aggregate, as Dean and Chapter, Mayor and Commonalty, &c. it is otherwise; for they in Judgment of Law never die. *4 Rep. 65. a.*

The President of the College of Physicians recovered a Judgment and died before Execution, and his Successor sued out a *Sci. facias* upon it; and adjudg'd that he well might, and not the Executors or Administrators of his Predecessor; for the

Suit is given to the College by a private Statute, and is to be brought by the President for the Time being, and the Law shall transfer the Duty to the Successor. *Cro. Jac. 159. pl. 13.*

A Corporation which hath a Head may make a personal Command without Writing, but a Corporation aggregate without a Head cannot. *Lutw. 1497.*

It was the Opinion of several learned Lawyers, that if the Master or President of a College devises Land to his College and dies, the Devise is void; because at the time the Devise should take effect it is without an Head, and an imperfect Body. *4 Leon. Case 346.*

If the common Officer of the Town doth any thing for their common Use, it is all the Reason that the Town be answerable for it. *1 Leon. Case 215.*

A Corporation must prescribe in his Predecessors, not in himself. *Cro. Jac. 673. pl. 5.*

A Grant

Corporation.

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A Grant is made to a Corporation, and delivered to a Stranger for their Use, and they sealed the Counterpart; the Stranger had no Letter of Attorney to receive it: But held to be good; for the sealing of the Counterpart was as well as if they had made a Letter of Attorney for it: So also is the bringing of an Action upon it. *Cro. El. 862. p. 39.*

Delivery of a Deed to the Use of a Corporation is good:

So is the sealing of a Counterpart, or bringing an Action on it.

ACTIONS arising out of the Corporations, ought not to be tried in Corporation-Courts; for their Privileges do properly and only extend to the Trial of such Actions, the Causes whereof do arise within their Jurisdiction. And they ought not by particular Jurisdiction to encroach upon the Common Law. And how to be punished for it. See *Lutw. 1571, 1572.*

What Actions may be tried in Corporation-Courts, and what not.

Where there is a Debt due to an old Corporation, who are incorporated by a new Name, they shall recover this by their new Name. *3 Lev. 237. 4 Rep. 87. b. 1 Saund. 344. Vide postea in this Head.*

The new Corporation may sue for a Debt to the old.

A Corporation may be known by two Names, and a Grant made by either of their Names is good. *Cro. El. 351.*

A Corporation may be known by two Names.

How to sue an old Corporation by a new Name. *Lutw. 519.*

How to sue an old Corporation by a new Name.

How the Election of Officers in Corporations shall be. *4 Rep. 77. b. 78.*

Of Elections of Members in Corporations.

A Corporation of Mayor and Aldermen are Lessors in an Ejectment, and the Demise in the Declaration is not mentioned to be by Deed; and this was assign'd for Error: But the Court would not allow it, being after Verdict. *Patrick and Bull. Mich. 8 W.*

A Demise in an Ejectment by a Corporation, and held good *sans* Deed.

A Corporation seals a Bond; two of their Members sign it. The Corporation is dissolved. The particular Persons are not obliged by it. *1 Lev. 237.*

Corporation seals a Bond; two of their Members sign it. The Corporation is dissolved. The two Persons are not oblig'd.

The Deed of a Corporation need not be delivered, as the Deed of a natural Person; for the putting of the Common Seal gives Perfection to it. *Dav. Rep. 44. a.*

The Deed of a Corporation needs only Sealing, no Delivery.

A Corporation cannot be a Trustee, or jointly seized with another. *2 Lev. 12.*

Cannot be a Trustee, or jointly seized.

A Promise to a Corporation is good without Deed. *2 Lev. 252.*

A Promise to a Corporation good *sans* Deed.

Where Misnomer of a Corporation in a Grant, shall not hurt the Grant. *3 Rep. from 73, to 76. 11 Rep. from 18. b. to 22. b.*

Where the Misnomer of a Corporation in a Grant will not hurt it.

Misnomer of a Corporation in an Act of Parliament, when the express Intent appears, shall not avoid the Act no more than in a Will. *10. Rep. 57. b.*

Misnomer of a Corporation in an Act of Parliament, or Will, shall not hurt.

Misnomer of a Corporation in a Bond.

An old Corporation incorporated by a new Name, the new shall enjoy the old Privileges.

The old Privileges continue to the new Corporations.

most of the Corporations in England have taken new Charters; but were antient Corporations before. *Raym.* 439.

An Attorney or Bailiff cannot appear for a Corporation without a Warrant.

How erected Corporations for Charity may be confirmed.

Instructions how to be established.

Resolutions of certain Opinions relating hereto.

All Elections, Grants, and Leases of Corporations shall be made by the more Voices, and not by the Founders Statutes, or Oaths imposed upon the Electors.

33 *H. 8. cap.* 27.

withstanding any Order or Statute, or Oath made by the Founder to the contrary; but the Election shall be by the more Voices, according to the Course of the Common Law.

Corporation.

The Case of the Mayor and Burgeses of Lynn upon the Misnomer of a Corporation in a Bond, and all that could be said *Pro* and *Con* thereupon. 10 *Rep.* from 122. *b.* to 126. *b.*

An ancient Corporation is incorporated by a new Name, yet their new Body shall enjoy all the Privileges that the old Corporation had. 4 *Rep.* 37. *b. Vide ante.*

A new Charter doth not merge or extinguish any of the antient Privileges of the old Corporation; but the new Corporation may use them as before; otherwise it would be mischievous; For

An Attorney cannot appear for a Corporation, nor a Bailiff in an Assize, without a Warrant under the Corporation-Seal. 1 *Plow.* 91.

How and in what Manner Corporations, erected heretofore for Works of Piety and Charity, may be confirmed. 10 *Rep.* from 23, to 34.

Instructions how those which shall hereafter be erected, shall be so established, that no Exceptions can be taken to them. *Ibid. Vide Title Charitable Uses.*

The Resolutions of certain Opinions or Questions, which might have disturbed the Quiet of the Law in those Points. *Ibid.*

All Assents, Elections, Grants and Leases made by the Dean, Warden, Provost, Master, President or other Governour of any Cathedral, Hospital, College or other Corporation whatsoever, with the Consent of the major Part of their Chapter, Fellows, or Brethren, shall stand and be good, not-

withstanding any Order or Statute, or Oath made by the Founder to the contrary; but the Election shall be by the more Voices, according to the Course of the Common Law.

Costs and Charges.

See **Administrators.**
Certiorari.
Damages.
Error.
Executors.
Statute.
Trials.

Costs are, *Expensæ litis*, recovered by the Plaintiff, together with his Damages; and the Word *Dampna* includes also the Costs, as it is in the Entry of Judgments. Where the Jury give Damages and Costs, the Entry is *quæ quidam Dampna*, viz. the Damages and Costs together, in toto se attingunt ad, &c. Also the Defendant recovers his Costs where the Plaintiff is nonsuited, or a Verdict for him.

Costs, Laid.

No Costs ought to be paid for the putting off of a Trial, where no Fault was in the Party against whom it is moved; For Costs are only to be paid by such Persons which by their Occasion have caused the other Party to have been at extraordinary

No Costs for putting off a Trial where there was no Fault in the Party.

Charges.

Trin. 1657. by *Glyn* Chief Justice: If a Reference be made to the Secondary, and he makes his Report; if one of the Parties be not satisfied with the Master's Report, but the same Matter is again at the Importunity of one of them, referred to the Master; here, if the first Report shall be confirmed by the second, the Court will make such vexatious Person pay exemplary Costs for his Vexation and Delay.

If upon a second Reference to a Master, he confirms his first Report, exemplary Costs shall be given.

If a Juror be withdrawn (upon a Trial) by the Consent of the Plaintiff and Defendant, they shall pay the Costs of the Jury equally between them:

If a Juror be withdrawn by Consent of both Parties, they shall pay the Costs equally between them.

Trin. 22 Car. B. R. For if one of the Parties (alone) should pay the Costs upon bringing the Issue (again)

to be tried by the same Jury, as the Course is so to do, it would be a sufficient Matter for him that did not join in paying the Costs, to challenge the Jury for Favour to him that did pay the Costs, in regard of the Money received of one Party only, which may move them to favour that Party more than the other from whom they received nothing.

Costs and Charges.

In an Action for Words, if under 40 s. Damages are given, Plaintiff shall recover no more Costs than Damages.

Where Plaintiff shall have Costs, tho' Damages be under 40 s.

That in an Action of Trespass *Vi & armis*, brought for destroying his Goods, the Plaintiff shall have his ordinary Costs tho' the Damages be under 40 s. for that the Statute 22 and 23 Car. 2. reaches only to such Actions in which the Freehold may come in Debate. *Raym.* 487, 488.

Attorney, &c. in Ejectment shall pay Costs if Lessor be insufficient.

When more Costs than Damages in Causes removed from Inferior Courts.

Executor non-suited upon account with himself shall pay no Costs.

Where more Costs and Damages after the Stat. Car. 2.

Where no double Costs upon Stat. Jar. 1.

Taxing of Costs is the Act of the Court.

but the Officer of the Court, deputed by the Court for such Purposes; and therefore the Court may alter the Costs taxed if they see Cause, but in ordinary Cases they use not to do it.

Court will make no Rule to encrease or diminish Costs taxed by the Secondary.

And the Case of *Style* and *Atwood*, *Pasch.* 1656. B. S. upon a Motion made to moderate Costs taxed by *Herne* Secondary, *Glyn* Chief Justice said, That he had sometimes moved to increase Costs, and sometimes to diminish Costs taxed by the Officer of the Court, but could never have his Motion granted, and therefore would make no Rule here.

When more than ordinary Costs ought not to be taxed.

Costs more than ordinary ought not to be taxed until the Attorneys on both Sides be heard for their Clients before the Secondary, and some Affidavit produc'd for that Purpose. *Mich.* 22 Car. B. R. Except it be where either of the Attorneys doth neglect to appear before the Secondary, having due Notice thereof; and then it shall be presumed he hath nothing to say for his Client in Mitigation of Costs.

By the Statute of 21 Jac. If the Plaintiff in an Action upon the Case for Words doth not recover 40 s. Damages, or more, he shall have no more Costs than Damages.

Costs paid by the Solicitor or Attorney in Ejectment, for Insufficiency of the Lessor. 2 Lev. 66.

When in Causes in Inferior Courts, removed into the King's-Bench, more Costs than Damages, notwithstanding the new Statute, and when not. 2 Lev. 124.

An Executor non-suited upon an Account with himself, shall pay no Costs. *Ibid.* 165.

Justification in Trespass for a way, *Repl' extra viam*, and Issue thereupon: More Costs than Damages after the Statute Car. 2. *Ibid.* 234.

Case against a Mayor, for refusing his Vote at the Election of a new Mayor, and the Plaintiff non-suited, shall not pay double Costs upon the Statute Jac. 1. *Ibid.* 250.

The taxing of Costs is the Act of the Court, although they be taxed by the Secondary of the Office. *Mich.* 22 Car. B. R. For the Secondary is

And the Case of *Style* and *Atwood*, *Pasch.* 1656. B. S. upon a Motion made to moderate Costs taxed by *Herne* Secondary, *Glyn* Chief Justice said, That he had sometimes moved to increase Costs, and sometimes to diminish Costs taxed by the Of-

Costs more than ordinary ought not to be taxed until the Attorneys on both Sides be heard for their Clients before the Secondary, and some Affidavit produc'd for that Purpose. *Mich.* 22 Car.

Costs and Charges.

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If an Indictment, taken in any County, be removed by *Certiorari* into the King's Bench; and the Court be moved, that it may be sent back again into the County where it was taken, and if the Court (upon good Cause shewn) do order it accordingly; it shall be removed back again at his Costs who desired it to be removed. *Mich. 22 Car. B. R.* For it shall be intended, that the removing of it is for his Benefit and Ease; and therefore it is Reason he should bear the Charge thereof.

Where an Indictment brought up by *Certiorari* shall be removed back at his Costs who desired it to be removed.

When upon a Trial the Plaintiff becomes nonsuit, the Defendant must pay the Jury, which is afterwards allowed him in Costs. *Mich. 22 Car. B. R.* For it is intended he receiveth a Benefit by the Nonsuit. *Qui sentit commodum sentire debet & onus.*

When Plaintiff is nonsuit, Defendant must pay the Jury, which is allowed him in Costs.

If there be such a Fault in the entering of a special Verdict, that it must be amended, the Plaintiff or Defendant, who was the occasion of making the Fault, must pay the Costs for the amending of it, (*Mich. 22 Car. B. R.*) if it be such a Fault that Costs must be expended to amend it; for it is not Reason that the other Party should pay for his Error.

Costs for amending a Fault in a special Verdict, to be paid by him, who was the Occasion of the Fault.

If a Trial at the Bar be put off in favour of the Plaintiff or Defendant, and the Party that was not the Cause of putting it off, be compelled by putting it off to keep his Witnesses in Town, he that caused the Trial to be put off, shall pay such Costs for keeping them in Town, as shall be taxed by the Secondary. *Hill. 22 Car. B. R.* For he is in such Cases to be Moderator betwixt both Parties, that Things may indifferently be carried betwixt them.

When a Trial at Bar is put off, the Party who was the Occasion of it, must pay the other Party's Charge of keeping his Witnesses in Town.

Costs are not to be allowed for unreasonable Motions, but only for such as the Party was necessarily put unto by the Course of the Court. *22 Car. B. R.* For the Law as it will not do unreasonable Things, so neither will it countenance those which do them.

Costs not allowed for unreasonable Motions.

Arbitrators are to make the Writings touching their Arbitrament, at their own proper Costs; and ought not to award, that the Parties that submitted to the Award, shall pay for them. *Pasch. 23 Car. B. R.* For this is no Part of the Submission, but a Charge that ariseth after it, and which the Arbitrators have taken upon themselves.

Arbitrators make the Writings of Award at their own Costs.

Where the Judges of the Court do desire to have Books in the Cause depending before them, to be advised of the Matter in Law the better, by considering of the Pleadings; the Plaintiff and the Defendant ought to join in the making of the Books to be delivered to them. *Trin. 23 Car. B. R.* For they are equally concerned in the Cause depending, and therefore it is reasonable that they should be at an equal Charge in the bringing of the same to a Conclusion.

Plaintiff and Defendant must join in the Charge of delivering Books to the Judges.

The Court refers the taxing of Costs to the Secondary, and makes no special Rule therein.

extraordinary the

No Costs on a Repleader.

If Defendant in a *Sci. fa.* appears and pleads to Issue, and Verdict and Judgment be had for the Plaintiff, he shall have no Costs; so likewise if Verdict for the Defendant.

Also where the Judgment is arrested.

Jury need not give Costs, but may leave it to the Court.

Upon a Judgment on *Nihil dicit* the Court will give Costs.

Upon a special Verdict in Replevin Costs shall likewise be given.

against the Replevier or against the Avowant. *Pasch. 24 Car. B. R.* Upon Judgment given upon Argument upon the Matter in Law.

The Secondary to order the Increasing or Mitigation of Costs.

it be in extraordinary Cases; and there the Court is to be moved, and is to direct the Secondary; for he is not to vary from the ordinary Rules of proceeding without the express Direction and Rule of the Court.

Juror appearing, and Jury adjourn'd; if Juror do not appear at the Day of Adjournment, he shall have no Charges.

Lessor of Plaintiff to pay Costs in an Action of Ejectment if Verdict be for Defendant.

Costs of the Suit, if it go against the Plaintiff; and therefore he made

It is the Course of the Court to refer the taxing of the Costs to the Secondary of the Office, and not to make any special Rules for such Matters, *Mich. 23 Car. B. R.* viz. in ordinary Cases; but in extraordinary the Court will sometimes make a Rule for it. *Vide post.*

No Costs are to be allowed upon a Repleader: *Mich. 23 Car. B. R.* For both the Parties were in Fault, to suffer such an insufficient Issue to be joined, and neither Party ought to have Costs of the other.

So likewise if the Defendant in a *Scire facias* appears, and pleads to Issue, and a Verdict and Judgment is had for the Plaintiff, here he shall recover no Costs nor Damage; there being no Costs or Damage prayed in the Writ; nor can be by Law, neither is the same given by any Statute; so likewise it is if there be a Verdict for the Defendant.

Also where Judgment is arrested after a Verdict there shall be no Costs of either Side.

It is not necessary that the Jury should give Costs, but they may leave it to the Court to do it. *Mich. 23 Car. B. R.* For the Court is best able to judge what Costs are fit to be given.

Upon a Judgment upon a *Nihil dicit* in Debt this Court will give Costs and Damages. *Trin. 24 Car. B. R.*

If there be a special Verdict found in a Replevin, where the Avowry is for Damage-feasant or Rent, the Costs and Damages shall be given either

The Court will not order any thing concerning the Increasing or Mitigation of Costs, but the Parties are to attend the Secondary in it, and to abide by his Order. *13 Nov. 1650. B. S.* Except

If a Juror appear upon a Trial which is to be at the Bar, and the Jury is adjourned, and he doth not again appear at the Day of Adjournment, he shall have no Charges allowed him for his former Appearance. *2 Maii, 1651, B. S.* For his former Appearance was to no Purpose, nor is beneficial to any Body; nor is the End for which he was summoned satisfied.

By *Glyn* Chief Justice. *Pasch. 1658.* it was said, That it is the Course of the Court of Common Pleas to make the Lessor of the Plaintiff in an Action of Trespass and Ejectment to pay the

made it a Rule that it should be so in this Court, which is now generally observed, and there is a particular Clause in the general Rule to confess Lease, Entry and Ouster for that Purpose. *Mich. 13 Car. 2.*

Note, That it is enacted by the late Act for Amendments, That for the preventing great Vexation, from suing out defective Writs of Error, that upon the quashing any Writ of Error, to be sued out for Variance from the Original Record, or other Defect, the Defendants in such Error, shall recover against the Plaintiff or Plaintiffs issuing out such Writ, his Costs as he should have had if the Judgment had been affirmed, and to be recovered in the same Manner.

Costs shall be given for suing out defective Writs of Error.

In a Writ of Error to reverse a Common Recovery where Judgment was affirmed, no Costs to be given, because no Delay of Execution. *Raym.*

No Costs if Judgment be affirmed in a Writ of Error to reverse a Common Recovery.

134. 135.

At the Common Law there was no Costs in a Writ of Error. *Ibid. 135.*

At Common Law, no Costs in a Writ of Error.

No Costs in a Writ of Error, if none in the Original Action. *1 Lev. 146. Vide postea.*

Also if none in the Original Action.

Costs for the Defendant given at the Discretion of the Court where the Plaintiff was nonsuited, because the Declaration upon the *Nisi prius* Roll varied from the Plea Roll, &c. *Ibid. 38.*

Discretionary Costs where Plaintiff was nonsuited upon a Variance in the *Nisi prius* and Plea-Roll.

No Costs of Suit are recoverable in an Action of Waste. *2 Saund. 257.*

No Costs in Action of Waste.

Also, if Costs of Suit be given by the Jury, where they are not recoverable; yet the Court will give Judgment *nullo habito respectu* to the Costs, altho' the Party does not release them.

Tho' Costs be given by a Jury, where not recoverable, yet the Court will give Judgment.

Where double Costs for suing in the Court of Admiralty for a thing done upon the Land. *Ibid.*

Double Costs for suing in the Admiralty for Things done upon Land.

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When there shall be Costs in a Prohibition.

Where Costs in a Prohibition.

Ibid. 361.

When for Amendment after Error brought.

For Amendment after Error brought.

Ibid.

When in Dower. *Ibid. 275.*

In Dower.

When in a popular Action. *Ibid. 274.*

In a popular Action.

When in a *Warrantia Chartae*. *Ibid. 322.*

In a *Warrantia Chartae*.

The first Statute which gave the Defendant Costs if a Verdict was found for him was *Marlb. cap. 6.*

The first Stat. which gave the Defendant Costs. Stat. of *Marlb. cap. 6.*

2 Inst. 112.

The Defendant in the Action, who is Plaintiff in the Errors, shall on Affirmance of a Judgment upon a Writ of Error pay double Costs. *Stat. 13 Car. 2. cap. 2. sect. 10.*

Double Costs upon a Judgment affirmed.

13 Car. 2. cap. 2. Sect. 10.

Costs and Charges.

No Costs upon a Writ of Error where it is not in *dilationis Executionis*.

3 H. 7. cap. 10.

Nor where Judgment is for the Defendant, and the Plaintiff brings a Writ of Error, and the Judgment is affirmed.

Nor where a Writ of Error is brought upon a Judgment in a real Action.

Executor or Administrator shall pay no Costs upon Judgment affirmed.

But shall pay Costs upon an Action accrued in their own Time.

Time, and he may bring it in his own Name, without naming of himself Executor. 4 Jac. 2. 3 Lev. 60. See a Case in *Yelverton* to this Purpose. and Cro. Car. 219. pl. 3. 1 Ventr. 92. But where an Administrator brings Debt upon Bond, and the Defendant pleads Payment to himself, and proves it, and moved that he should pay Costs, because of his own

And where not.

Knowledge he had no Cause of Action. Cur. contra. Because there he must name himself Executor, or Administrator, which in Trover he need not upon a Conversion in his own time. 1 Ventr. 92.

And where he shall not.

An Executor shall pay no Costs, tho' the Action was brought upon his own Possession.

Costs tax'd for the Defendant upon a Trial of Errors in Fact. Stat. 3 H. 7. cap. 10.

No Costs where a Verdict is upon a Release of Errors, and why.

to be affirmed: But the Judgment is, That the Plaintiff in the Error shall be barred of his Writ of Error; for here was neither Nonsuit,

No Costs shall be given upon a Judgment affirmed where it is not in *dilationis Executionis*; for if Execution were executed before the Writ of Error there shall be no Costs by 3 H. 7. cap. 10. Cro. Jac. 636. pl. 3. See Title Error.

Neither shall any Costs be given where there is a Judgment for the Defendant, and a Writ of Error brought by the Plaintiff, and the Judgment affirmed; for it is out of the Stat. of 3 H. 7. cap. 10. Cro. Car. 401. pl. 10.

Nor where a Writ of Error is brought upon a Judgment in a real Action; because there was no Costs nor Damages recovered in the first Action, so there was no Delay of Execution, but only for the Land. Cro. Car. 425. pl. 15.

If an Executor or Administrator bring a Writ of Error, and Judgment is affirmed against him, he shall not pay Costs: Because it is in *Anter Droit*. 3 Lev. 375.

But if an Executor bring Trover for a Conversion in his own Time, and be nonsuited, he shall pay Costs: Because the Action accrued in his own

But an Executor brought an *Assumpsit* upon a Promise made to himself, and was nonsuited, he shall not pay Costs: Because if he had recovered, it should have been Affets. 5 W. & M. B. R. 2 Lev. 165.

Where a Plaintiff Executor brings an Action upon his own Possession and is nonsuited, yet he shall pay no Costs. Cro. Car. 29. pl. 3 Latch 220. Con. See before contra.

Error in Fact was tried, and a Verdict for the Defendant in the Errors, and Costs were ordered to be taxed by the Stat. 3 H. cap. 10. *Occasione dilationis Executionis*.

Where the Defendant in Errors pleads a Release of Errors, and a Verdict is found for him, he shall have no Costs, for that the Judgment is not

Discontinuance, or Judgment affirmed, as the Statute of 3 H. 7. cap. 10. requires.

An Attachment lies against the Party that refuseth to pay Costs, which are taxed by the Master of the Office, upon a Rule of Court made for Payment of Costs; after a Demand made by the Party, or some Person authorized by him, and Refusal of Payment, and Affidavit made thereof. For it is a Contempt of the Court, not to obey the Rules thereof.

If upon a Trial the Plaintiff be forced to be nonsuit, because his Witnesses did not appear, he may by Action recover 10 l. together with such further Recompence to the Party grieved, as by the Discretion of the Court, out of which the Subpœna issued, according to the Loss and Hindrance sustained by the Party who procured such Process, shall be allowed, by the Statute of 5 Eliz. cap. 9. sect. 12. See Title Witnesses.

3 H. 7. cap. 10.

Where Attachment lies for Non-payment of Costs.

Action lies against Witnesses, who did not appear upon a Subpœna.

Discretion of the Court, out of which the Subpœna issued, according to the Loss and Hindrance sustained by the Party who procured such Process, shall be allowed, by the Statute of 5 Eliz. cap. 9. sect. 12.

In all Actions of Trespas, Assault, Battery, and other Personal Actions, where the Judge at the Trial shall not certify on the Record, That the Assault and Battery was well proved, or Title of the Land in Question. If the Jury find under 40 s. Damages, then to recover no more Costs.

22 & 23 Car 2. cap 9. Sect. 149.

By the Statute of 22 & 23 Car. 2. cap. 9. sect. 149. it is enacted, That in all Actions to be brought in the Courts of Westminster-Hall, of Trespas, Assault, and Battery, and other personal Actions, wherein the Judge at the Trial of the Cause shall not find, and certify under his Hand upon the Back of the Record, that an Assault and Battery was sufficiently proved; or that the Freehold, or Title of the Land in the Declaration, was chiefly in Question; the Plaintiff in such Action, in case the Jury shall find the Damages to be under 40 s. shall not recover or obtain more Costs of Suit, than the Damages shall amount unto.

By another Act since: In all Actions of Trespas, where the Judge shall certify on the Postea, that the same was wilful and malicious, he shall have his full Costs.

8 & 9 W. cap. 10.

4 & 5 Anne, For

Where the Plaintiff may amend his Declaration.

What the Plaintiff must do after his Amendment.

But now by the Statute of 8 & 9 W. cap. 10. it is enacted, That in all Actions of Trespas to be brought in any of the Courts at Westminster, wherein at the Trial it shall appear, and be certified by the Judge under his Hand upon the Postea, that the Trespas whereupon the Defendant was found guilty, was wilful and malicious, he shall then have his full Costs. See Postea upon the Statute of Amendment of the Law.

It is at the Defendant's Election, if the Plaintiff do amend his Declaration, either to accept of Costs and to plead, or else to refuse Costs, and to implead unto the next Term, and not to plead. (Mich. 22 Car. 1. B. R.) The Defendant upon such Amendment is to have Costs, because thereby he may have Occasion to take new Advice of Counsel what to plead. I take it to be absolutely necessary for the Plaintiff, after his Amendment of his Declaration, to give a new Rule to plead, and to call upon the Defendant for his Plea, and do not think that Judgment can be justifiably signed without it.

Costs and Charges.

The Defendant shall have Costs in all Actions where the Plaintiff shall have them.

4 Jac. 1. cap. 3.
23 H. 8. cap. 15.

No Costs to be recovered against the King.
24 H. 8. cap. 8.

The Defendant shall have his Costs upon a Demurrer, by the Statute of
8 & 9 W. cap. 10.

Where some of the Defendants are found Not guilty, they shall have their Costs.

8 & 9 W. 3. cap. 10.
Sect. 1.

Where Costs shall be recovered upon *sci. fa.* and in a Prohibition,

Nonspit, Discontinuance, or Verdict.

Defendant shall recover his Costs. But upon a Demurrer to a Plea to a *Sci. Fa.* upon this Statute against an Administratrix upon an interlocutory Judgment, *Quare dampna assideri non debent*, where she pleaded a special Plea and Judgment against her, it was held that she shall not pay any Costs. *Smith and Harmer. 3. Anna.*

Where the Plaintiff shall have his Costs, the Defendant shall have his, except in case of Executors or Administrators.

Where Costs shall be recovered in an Action of Debt upon a Statute.

the Party to a Suit, and he recovers, he shall recover his Costs: Because he did not pay the Duty due by the Statute upon Demand. *Cro. Car. 559. pl. 3. 560.*

No Costs where the Duty is uncertain, as treble Damages, &c.

ing uncertain, the Statute intended to give the treble Value only, and not any Costs. *Cro. Car. 559, 560. 1 Rol. Abr. 516, 517. pl. 5. 10 Rep. 116. Et Postea hoc Titulo, & Cro. Jac. 70. pl. 12.*

Where the Costs shall be doubled or trebled, and where not.

The Defendant shall have Costs in Trespass, Ejectment, or any Action where the Plaintiff might have them. 4 Jac. 1. cap. 3. See 23 H. 8. cap. 15. the Title whereof is, That the Plaintiff being nonsuited, shall yield Damages to the Defendant in Actions personal by the Discretion of the Justices.

No Costs shall be recovered against the King or any Person in whose Names any Recognizances, Bonds, Indentures or Specialties have been taken to the King's Use.

If the Defendant hath Judgment upon a Demurrer, he shall have his Costs, by the Statute of 8 & 9 W. cap. 10.

In all Actions of Trespass, Assault, False Imprisonment, or Ejectment, brought against several Defendants, if any of them be found Not guilty, he shall have his Costs, per Stat. 8 & 9 W. 3. c. 10. sect. 1.

So upon all Suits upon *Sci. Fa.* and Prohibition, the Plaintiff obtaining a Judgment, or any Award of Execution after Plea pleaded, or Demurrer joined therein, shall recover his Costs of Suit. And if the Plaintiff shall become Nonsuit, or suffer a Discontinuance, or a Verdict pass against him, the

Defendant shall recover his Costs. But upon a Demurrer to a Plea to a *Sci. Fa.* upon this Statute against an Administratrix upon an interlocutory Judgment, *Quare dampna assideri non debent*, where she pleaded a special Plea and Judgment against her, it was held that she shall not pay any Costs. *Smith and Harmer. 3. Anna.*

It is a Rule, that where the Plaintiff shall have his Costs if he recover against the Defendant, the Defendant shall have his Costs if the Plaintiff be Nonsuit, or recovers a Verdict against him (unless in case of Executors or Administrators.)

Now where a Statute gives a Penalty certain, and gives an Action of Debt for it, there if the Defendant doth not pay it upon Demand, but forceth

the Party to a Suit, and he recovers, he shall recover his Costs: Because he did not pay the Duty due by the Statute upon Demand. *Cro. Car. 559. pl. 3. 560.*

But where the Duty is uncertain, as to recover treble Damages for Waste, or upon the Statute, for not setting forth of Tithes; there the Duty being uncertain, the Statute intended to give the treble Value only, and not any Costs. *Cro. Car. 559, 560. 1 Rol. Abr. 516, 517. pl. 5. 10 Rep. 116. Et Postea hoc Titulo, & Cro. Jac. 70. pl. 12.*

This is only in such Cases where Costs were allowed in Actions before these Statutes, for there the Plaintiff's Costs shall be doubled or trebled as well

well as the Damages; but where the Statute makes a new Law, where no Costs were given before, there the Plaintiff shall have only the double or treble Damages, and no Costs. See 2 *Inst.* 289.

Costs shall be paid upon a Recovery upon an Act of Parliament, where only a single Sum is given. 3 *Jac.* 2. B. R.

There shall be Costs where an Act gives a single Sum.

Where an Action upon the Statute is given to the Plaintiff, there if he recovers, he shall have Costs. But no Costs shall be recovered in a popular Action, be the Sum forfeited certain or uncertain, unless given by the Statute particularly. 5 *W. & M. B. R. Lutw.* 201. 3 *Lev.* 375. See 1 *Keb.* 549.

Where the Statute gives the Action to the Plaintiff, he shall have Costs; but none in a popular Action.

The Statute of 2 *W. & M. cap.* 5. for Distress for Rent, says, That upon a Rescous the Plaintiff shall recover treble Damages and Costs; the Costs shall be treble as well as the Damages; but, says the Court, in a reasonable Manner. 6 *W. & M. B. R.*

Where Treble Damages and Costs shall be recovered. 2 *III. & IV. cap.* 4.

In Actions of Waste and Debt for not setting forth of Tithes, where the single Damages, or Value found by the Jury, doth not exceed twenty Nobles, the Plaintiff shall have his Costs, *per Stat.* 8 & 9 *W. 3. cap.* 10. But if they exceed that Sum, then there is no Costs, for then the Matter is purely as it stood before that Statute.

Where Costs in Waste and Debt for Tithes.

Also in a *Quare Impedit* there are no Costs recovered. *Keilm.* 20. a.

8 & 9 *III. 3. cap.* 10. Single or double.

No Costs in a *Quare Impedit*.

At the Common Law before the Statute of Gloucester 6 *E. 1. cap.* 1. a Man should not recover Damages in a real Action, as in *Aiel*, *Besaiel*, *Cosinage*, *Affize de Novel Disseisin* against the Feoffee of the Disseisor, *Mortd'ancestor*, &c. nor in Dower before the Statute of Merton. But in mixt Actions, as *Affize*, *Entry in Nature of Affize*, &c. or in personal Actions, as in *Trespas*, &c. he should. And where it is said, That in all Cases where the Plaintiff recovers Damages, he shall recover his Costs, must be intended in all Cases where Damages were recoverable before, or by the Statute of 6 *Ed. 1.* For where a Man before or by the same Statute recovered no Damages, if afterwards another new Statute in a new Case gives Damages either single, double or treble, the Plaintiff shall not recover his Costs: Because this is an Act of Creation, which gives a Recompence where there was none before. But otherwise it is in the Case of an additional Act, which adds a greater Recompence than was given before, for there Damages and Costs were given by the Common Law, but the Act increases them, and then the Plaintiff shall have his Costs. *Pilfold's Case*, 10 *Rep.* 116. a. 2 *Inst.* 288, 289.

Where Damages are recoverable by the Statute of 6 *E. 1. c. 1.* of Gloucester, and of Merton.

See Title Damages, Statute of Merton.

An Exposition of 6 *E. 1. cap.* 1. which is a Statute of Creation.

How in case of an additional Act.

Costs and Charges.

Where Costs shall be given by the Statute of 4 & 5 Anne, upon Insufficiency of Demurrers, or Judge's Certificate upon Issue tried.

4 & 5 Ann. cap.

Costs shall be given in like Manner; unless the Judge who tried the said Cause shall certify, That the Defendant, or Tenant, or Plaintiff in Replevin had a probable Cause to plead such Matter, which shall be found against him. See Title Demurrer, and Title Pleas. See *ante* 8 & 9 W. cap. 10.

Costs are also given to the Defendant in Error, upon quashing of a Writ of Error.

So also upon the Plaintiff's dismissing of his Bill in Equity; or the Defendant's dismissing of it for want of Prosecution.

Who shall pay the Costs.

dict against him. (*Hill. 22 Car. B. R.*) For he is the Person upon Record, of whom the Law takes Notice; and the Court takes no Notice of the private Agreements between the Parties: Neither can Execution be made out against any other than the Person against whom the Judgment is, and the Costs are recovered.

Costs upon a feigned Action.

Where a feigned Action was ordered to be tried at the Assizes, upon an Issue directed by the Court of King's Bench upon a Matter in the Crown-Office, and there was a Verdict for the Plaintiff; he shall thereupon have his Costs. 1 Anne B. R. *inter Still and Rogers.*

Whether an Avowant shall recover Damages and Costs in an Avowry, for an Amercement in a Leet.

7 H. 8. cap. 4.

21 H. 8. cap. 19.

By the Statute of 4 & 5 Anne, it is enacted, That if several Matters shall be pleaded with the Leave of the Court, and shall upon Demurrer joined be adjudged insufficient, Costs shall be given at the Discretion of the Court: Or if a Verdict shall be found in any Issue in the Cause, for the Plaintiff or Demandant, where several Pleas are pleaded,

Costs shall be given in like Manner; unless the Judge who tried the said Cause shall certify, That the Defendant, or Tenant, or Plaintiff in Replevin had a probable Cause to plead such Matter, which shall be found against him. See Title Demurrer, and Title Pleas. See *ante* 8 & 9 W. cap. 10.

By the same Statute Costs are given against the Plaintiff in Errors, for Variation from the original Record, or other Defect; which Costs shall be, as if the Judgment had been affirmed.

And by the same Statute, upon the Plaintiff's dismissing of his Bill in Equity, or the Defendant's dismissing of it for want of Prosecution, the Plaintiff shall pay full Costs, to be tax'd by a Master.

If one will give leave to another to sue in his Name, he that grants the Leave shall pay the Costs of the Suit, in case there be a Nonsuit, or a Verdict against him. (*Hill. 22 Car. B. R.*) For he is the Person upon Record, of whom the Law takes Notice; and the Court takes no Notice of the private Agreements between the Parties: Neither can Execution be made out against any other than the Person against whom the Judgment is, and the Costs are recovered.

Where a feigned Action was ordered to be tried at the Assizes, upon an Issue directed by the Court of King's Bench upon a Matter in the Crown-Office, and there was a Verdict for the Plaintiff; he shall thereupon have his Costs. 1 Anne B. R. *inter Still and Rogers.*

Whether the Avowant for an Amercement in a Leet shall recover Damages and Costs by 7 H. 8. cap. 4. and 21 H. 1. cap. 19. or either of them, was the Question. *Berkley and Croke*, That he should. *Jones*, That he should not. But for Rent or Damage Feasant he shall; and for what else, see the Statutes, and *Cro. Car.* 532. pl. 11. 533, 534. See also Title Damages.

Covenant.

See {
 Assignment.
 Breach.
 Condition.
 Release.

A Covenant is an Agreement made by Deed in Writing between two or more Persons, and sealed by them, whereby each of them is bound to the other to perform certain Covenants of his Part.

If one do covenant generally to levy a Fine of certain Lands, he that doth thus covenant, is not thereby bound to go before Commissioners authorized by a *Dedimus* to take this Fine to acknowledge his Consent. (*Trin. 24. Car. B. R.*) For it shall be intended he was to do it in the ordinary Way, which is not before Commissioners.

Also upon a Covenant to levy a Fine, the Party must bring his Writ of Covenant, and *Præcipe*, and Concord, and tender it to the Covenantor before an Action of Covenant will lie for refusing to do it.

If a Lessee for Years covenant expressly to repair a House let unto him, and during his Term the House is burned down, he is tied by the Law to repair or new-build it, whether it be burnt by Negligence or otherwise. (*Mich. 1649. B. S.*) For by his express Covenant he undertakes to undergo all Casualties; but he is not so tied by a Covenant in Law, neither is Tenant at Will so obliged.

There are Covenants obligatory and Covenants declaratory; Covenants declaratory serve to limit and direct Uses, but Covenants obligatory as for quiet Enjoyment freed and discharged from all Incumbrances, &c. shall never be construed to raise an Use, but to have an Action of Covenant upon. *1 Sid. 27.*

Where-ever the Intent of the Parties can be collected out of the Deed for the not doing or doing of the Thing, Covenant will lie. *Chanc. Rep. 294.*

Covenant, what.

Covenant to levy a Fine: Covenantor is not bound to go before Commissioners to do it.

Covenantor must tender his Writ, &c. to Covenantor before an Action will lie for refusing to levy a Fine.

Covenant to repair a House, which is burnt during the Term; Covenantor must new-build it.

The Difference between Covenants declaratory and obligatory.

Where Actions of Covenant lie.

It will lie upon a Bond.

A Declaration in Covenant is good without the Repetition of & sic, &c.

How to declare and assign a Breach upon a Covenant, that the Lessor had good Right to let.

The Covenant being general, the Breach may be assigned as general as the Covenant.

How the Plaintiff ought to have replied, and shewed his Right.

Covenant lies for Repairs by the Lessor against the Lessee after the Assignment.

Grantee of a Reversion may bring Covenant for Rent against a Lessee.

Covenant for Rent lies not against an Assignee of a Term, after his Assignment over, without Notice.

Covenant lies for the Assignee of the Reversion by

32 H. 8. cap. 34. but cannot bring Debt, or distress without Attornment.

The Reason why.

Stat. 4 & 5 Ann.

How to assign a Breach in an Action upon a Bond to perform Covenants.

Covenants, he must assign but one Breach of Covenant in that Action; because if one Breach should be proved, it is enough to maintain his Action, and is a Forfeiture of the whole Penalty. But where a

Covenant.

A Covenant will lie upon a Bond; for it proves an Agreement. *Chanc. Rep.* 294.

A Declaration in Covenant is good without concluding according to the usual Form, & sic non tenuit Conventionem in hoc, &c. For there being a Breach sufficiently alledged, there need not be any Repetition. *Cro. Jac.* 298.

A Man covenants that he had lawful Right and Estate to let; and assigned for Breach, that he had not Right nor lawful Estate to let, & sic, &c. and moved, that the Breach was too general: For he hath not shewn that the Lessor had not any Right, or that a Stranger had evicted him by Title. *Curia.* The Covenant being general, the Breach may be assigned as general as the Covenant; but the Plaintiff ought to have maintained, that he was seized in Fee, and had a good Estate to demise; and then the Plaintiff ought to have shewn a special Title to some other. *Cro. Jac.* 204. pl. 6.

Covenant for Repairs lies by the Lessor against the Lessee after Assignment, there being an express Covenant; and this, although Acceptance of the Rent of the Assignee had been pleaded. *Cro. Jac.* 309. pl. 8.

Covenant for Rent lies against the Lessee by the Grantee of the Reversion, where there is an express Covenant, and this although there had been pleaded an Acceptance of the Rent. 3 *Lev.* 223.

Covenant for Rent against an Assignee of a Term for Rent, due after the Assignments over to another without Notice, doth not lie. *Show. Rep.* 340.

The Plaintiff brings Covenant as Assignee of the Reversion. *Curia.* By 32 H. 8. cap. 34. the Reversion is vested in the Plaintiff, but not to distress, or bring Debt without Attornment. *Woodward vers. Marshall & W.* See *Cro. Jac.* 522. Because the Statute transfers the Privy of Contract without more Ceremony; but the Distress or Action of Debt is a Remedy incident to the Grant of the Reversion at the Common Law, and therefore the Forms required by the Common Law are to be observed. 1 *Lev.* 259, 260. But now by a Statute made 4 & 5 Anne, (which see in Title Attornment;) there needs no Attornment.

If one brought formerly an Action of Debt upon an Obligation that was given for Performance of Covenants upon Supposition of a Breach of the

Man

Man brings an Action of Covenant, he may assign twenty Breaches, if there are so many Covenants: For there is a particular Damage to the Plaintiff for the Breach of every particular Covenant, and a several Issue must be taken upon every several Breach. But since by a Statute made 8 & 9 W. 3. cap. 10. Entituled, *An Act for the better preventing of frivolous and vexatious Suits*, it is enacted, That in all Actions to be prosecuted in any of his Majesty's Courts of Record upon any Bond or Bonds, or Penal Sum, for Non-performance of Covenants or Agreements in any Indenture or Writing, the Plaintiff may assign as many Breaches as he shall think fit. And the Jury upon the Trial shall assess, not only such Damages and Costs as hath heretofore been usually done in such Cases, but also Damages for such of the Breaches as shall prove to be broken: And the like Judgment shall be entred, as heretofore hath been usual in such Actions.

Also if Judgment shall be given for the Plaintiff by Demurrer, or *Nil dicit*, the Plaintiff may suggest upon the Roll as many Breaches as he shall think fit; upon which a Writ of Enquiry shall go to the Sheriff, to summon a Jury to appear before the Judge of Assize, or *Nisi Prius*, to enquire of the Truth of every one of those Breaches, and assess Damages to the Plaintiff; which Writ shall be returned by the Judge of Assize, or *Nisi Prius*, to the Court from whence it came. And that if the Defendant shall after such Judgment entred, and before Execution executed, pay into the Court where the Action shall be brought, to the Plaintiff's Use, such Damages so assess'd, together with Costs of Suit, there shall then be a Stay of Execution entred upon Record.

And in case Execution shall be executed, and the Plaintiff is satisfied his Damages and Costs, with reasonable Costs for executing the Execution, then the Body, Goods or Lands of the Defendant shall be discharged from the Execution, which shall be entred upon Record: But such Judgment shall stand as a Security to answer the Plaintiff, his Executors or Administrators, such Damages as shall or may be sustained for Breach of any Covenant in such Deed; for which the Plaintiff, his Executors or Administrators, may have a *Sci. Fa.* upon such Judgment against the Defendant, or against his Heirs, Tertenants, or his Executors or Administrators, suggesting other Breaches of the said Covenants, and to summon him or them to shew Cause why Execution should not be had and awarded upon the said Judgment; upon which there shall be like Proceedings as was in the Action of Debt upon the said Bond, for assessing of Damages upon Trials of Issues joined upon such Breaches or Enquiry thereof, upon a Writ to be awarded in manner aforesaid.

And

And how in an Action of Covenant.

How the Law came to be changed in the Case of Bonds, for Performance of Covenants.
8 & 9 W. 3. c. 10.

So where Judgment is given for the Plaintiff upon a Demurrer, or *Nil dicit*, the Plaintiff may suggest as many Breaches as he pleases, upon which a Writ of Enquiry shall go.

Upon Payment of the Money there shall be a Stay of Execution.

Where Satisfaction shall be of the present Damages.

But Judgment shall stand as a Security to answer the future Breach of any Covenant for which there may be a *Sci. Fa.*

Suggesting the Breaches of the Covenants, and how the Proceedings to be.

Upon Payment or Satisfaction, all further Proceedings to stay.

8 & 9 W. 3. cap. 10.

Where the Covenant is in the Disjunctive, when the Action to be brought.

Lessor gives Notice which he will accept, whether the best Beast or the 40 s.

Testatum existit is good in Covenant, not in Debt.

of Debt for Rent, it is naught; and so held in Arrest of Judgment after a Verdict. 6 W. B. R. Cro. Eliz. 195.

Quod cum testatum existit is good in a Declaration, to induce the Action, and assign the Breach.

But not so in a Bar or Replication.

It lies where there is any Agreement under Hand and Seal.

One named in the Covenant never sealed, and left out of the Declaration, and good.

So where there were nonsensical Words in the Covenant, and left out of the Declaration.

Of Covenants in Law, and express Covenants.

the lawful Entry, Eviction or Interruption of any Man; but not against tortious Entries, Evictions or Interruptions: Because against tortious Acts the Lessee hath his proper Remedy against the Wrong-doers. Vaugh. 118, 119, 126.

What express Covenants bind the Lessor in Case of tortious Acts.

against the Lessor for the tortious Entry of a Stranger; because no other

And that upon Payment or Satisfaction in manner aforesaid, all further Proceedings on the said Judgment are again to be stayed, and so *Toties Quoties*. And the Defendant, his Body, Lands or Goods shall be discharged out of Execution as aforesaid. 8 & 9 W. 3. cap. 10.

Where a Covenant is in the Disjunctive, to render the best Beast for an Herriot, or 40 s. at the Election of the Lessor, upon the Death of any of the Lives; here an Action will not lie, until the

In an Action of Covenant brought upon an Indenture of Lease, &c. it is well enough for the Plaintiff to say in his Declaration, *Testatum existit* that the Plaintiff demised, &c. but in an Action

The Plaintiff declares upon an Indenture which recites, *Quod cum testatum existit*, that he enfeoffed the Plaintiff, but doth not alledge by Matter of Fact that he did enfeoff him, which being only by way of Recital, is not good. Curia. The Difference is where it is by way of Declaration, and where by way of Bar or Replication; for in the Declaration *testatum existit* is sufficient to induce the Action and assign the Breach. Cro. Jac. 537. pl. 2. See Cro. Jac. 383. 537. 1 Cro. 188. 3 Cro. 195.

Where there is any Agreement under Hand and Seal, Covenant lies. 2 Mod. 91.

Where in a Deed there is mentioned, that A. B. and C. D. (which C. D. never sealed the Deed) do covenant, and the Action was brought only against A. B. Also there were some insensible Words in the Covenant which were also left out of the Declaration, and only the sensible Words put in; and in both these Cases the Declaration was held to be good. Cro. Jac. 258. pl. 18.

All Covenants between Lessor and Lessee are either Covenants in Law, or express Covenants. By Covenant in Law, the Lessee is to enjoy against

But if the Lessor expressly covenants that the Lessee shall enjoy without the Entry or Interruption of any Man, whether such Entry or Interruption be lawful or tortious, there Covenant will lie against the Lessor for the tortious Entry of a Stranger; because no other

other Meaning can be given to his Covenant, because of the Words, Of any Man. *Vaugh.* 119. See 3 *Leon. Case* 64. *Cro. El.* 213.

When a Man covenants, that his Lessee shall enjoy against all Men; he doth neither expressly covenant for his Enjoyment against tortious Acts, nor doth the Law so interpret his Covenant. *Vaugh.* 123.

Where a Man covenants to save harmless against such an one, there it extends to any Interruption whatsoever from him. 1 *Leon. Case* 458.

There are many Cases where Words will make a Covenant, when the general Words of Covenant and grant are wanting; as *Yielding and paying* will make a Covenant. 2 *Mod.* 92. and so *Demise and grant.* *Cro. Jac.* 74. pl. 1.

If a Lease for Years be made by Deed with the Words *dimisi & ad firmam tradidi*; upon that an Action of Covenant lies against the Lessor if he enters upon the Lessee, but not if a Stranger enters. 2 *Leon. Case* 131. *Cro. El.* 214. pl. 6.

A Covenant not to sue is an absolute Release. But a Covenant not to sue within a particular Time is no Release; and if a Suit be brought within the Time, the Remedy must be by Action of Covenant. *Cro. El.* 352. pl. 7.

Covenant brought in *London* for not repairing of a House in *Surrey*, and alledges that at *London* he suffered the House to decay: Adjudg'd that this Breach is of a Matter local, and not well assigned, whereupon the Plaintiff discontinued. *Cro. Jac.* 446. pl. 26.

Where Houses are blown down by Tempest, the Law excuses the Lessee in an Action of Waste; but in a Covenant to repair and uphold, it will not. 1 *Plow.* 29. a.

Where a Man covenants to uphold and repair an House, tho' it be burnt down by Lightning, destroyed by alien Enemies, or any Accident by inevitable Necessity, he ought to repair it; because he might have provided against it by his Contract. *Allyn* 26, 27. See more fully in Title Debt.

The Lessee covenanted to repair the House with necessary and tenantable Reparations; the Lessor assigns a Breach in not repairing for want of Tiles, and dawbing with Mortar, and did not shew that it was not tenantable; and held to be naught. *March* 17. pl. 39.

There was a Demurrer to a Declaration for not concluding with these Words, *Et sic infregit Conventionem*, after the Breach assigned (as the usual Course is); but the Court held it good notwithstanding. *Mich.* 34 *Car.* 2. *B. R.* *Jones* 229. *Cro. Jac.* 298.

And where not.

Where the Covenant is to save harmless against 7. S.

Yielding and paying and other Words, will make a Covenant.

Where Covenant lies against the Lessor upon the Words *Demise and grant.*

Covenant not to sue where it is a Release, and where not.

Show. Rep. 46, 47.

Covenant brought in *London* for not repairing of an House in *Surrey*, is naught.

Where Houses are blown down by Tempest, Waste will not lie, but Covenant will.

Upon a Covenant to repair, the Lessee must repair, tho' burnt down by Lightning or destroyed by Enemies, &c.

How the Breach shall be assigned for want of tenantable Repairs.

The Conclusion of the Declaration should be, *Et sic infregit Conventionem.*

Mich. 34

A. Co.

In a Covenant to make such Assurance as Counsel shall advise, what is to be done on either Side.

mit him to read it and carry it to his Counsel; and is also to have convenient Time after the Assurance shewn him to perfect it. *Cro. El. 9. pl. 1.*

Where a Man is tied up by his Plea of general Performance.

A Covenant to make such Assurance as Counsel should advise, the Plaintiff says that he made it; it is naught,

Covenant to convey as Counsel should advise.

How to plead in this Case.

Mutual Covenants cannot be pleaded in Bar one to another.

Where mutual Covenants and precedent Covenants.

When the Covenant is suable.

Where Covenants are distinct and mutual.

The Difference where the Words are Performed, and To be performed.

Where a general Breach is assigned, that *non performavit aliqua*, yet it is good after Verdict.

it was held good after a Verdict; because it shall be presumed that the Judge, who tried the Cause, was satisfied upon the Evidence. *5 W. & M. B. R.*

A Covenant to make such Assurance as the Plaintiff's Counsel shall advise; here the Plaintiff must give Notice of the Assurance, and the Plaintiff is not only to shew him the Assurance, but is to permit him to read it and carry it to his Counsel; and is also to have convenient Time after the Assurance shewn him to perfect it. *Cro. El. 9. pl. 1.*

A Man covenants to make such Assurance as Counsel shall advise; the Defendant pleads Performance of Covenants; he cannot afterwards plead *quod consilium non dedit advisamentum*. *Cro. El. 828. pl. 33.*

A Covenant to make such Assurance as the Plaintiff's Counsel should advise; the Plaintiff says that he himself prepared an Assurance, and the Defendant refused to execute it; this is no Breach of the Covenant. *Cro. El. 297. pl. 8.*

The Plaintiff covenants that if the Defendant would pay 40 *l.* he would convey as the Defendant's Counsel should advise; in an Action of Covenant for the 40 *l.* the Defendant pleaded that the Plaintiff did not convey as the Counsel did advise; this is naught, because he did not shew what the Counsel did advise. *1 Keb. 178. pl. 143.* Also note, these being mutual Covenants cannot be pleaded in Bar one to another. *Ibid. See Lev. 41, postea.*

Where there are mutual Covenants, and the one is not to be performed before a precedent Covenant is performed by the Plaintiff; there the Covenant is not suable, until the other is performed. *4 Jac. 2. B. R.*

But where the Covenants are distinct and mutual, several Actions may be brought against each other. *2 Mod. 74. 1 Keb. 178. pl. 143.*

Where a Man covenants to assure an Estate, and the other covenants upon the Assurance performed to pay so much; here the Money is not to be paid until the Assurance made; but if it had been in Consideration of the Covenant to be performed, then he had been bound to pay the Money presently, and to take his Advantage upon his Covenant. *2 Leon. Case 264*; so note a Difference between the Words Performed and To be performed.

Where there is a Covenant for the doing of several Matters, the Plaintiff assigns a Breach that the Defendant hath not performed *aliqua ex parte sua*: Altho' it is not set forth particularly what the Covenants were which were not performed, yet

Covenant.

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If any of the Covenants in an Indenture, or of the Conditions of a Bond, are against Law, and some are good and lawful; those which are against Law, are *ab initio* void, and the other stand good.

Where good in Part,
and void in Part.

11 Rep. 27. b.

An Action of Covenant was brought by seven Plaintiffs against one Defendant; and they set forth, That they, & *quolibet eorum per se respective* covenanted, that every one of them should bring so much Money into Stock to be employed; and it was held that the Action did well lie for the Seven. *Mich.*

Covenant by Seven
against One; and says,
that they, & *quolibet eo-
rum per se respective co-
venanted.*

5 W. & M. B. R.

A Man by Indenture demises *Black Acre* to A. *White Acre* to B. and *Green Acre* to C. and covenants with them, and *quolibet eorum*, that he is lawful Owner of the Land: Here in respect of the several Interests, by the Words *Quolibet eorum*, the Covenant is made several. 5 Rep. 18. b. 19. a.

Where the Words of
the Covenant, *Cum quoli-
bet eorum*, are several, and
where joint.

But if he had demised the three Acres to them jointly, then the Words *Cum quolibet eorum* are void, and the Covenant is joint. 5 Rep. 19.

Merchants join and covenant severally: This Word *Severally*, makes them several, and not joint Covenants. 5 Rep. 23. a.

The Word *Separatim*
makes several and not
joint Covenants.

One Covenant is not pleadable in Bar to another Covenant. 3 Lev. 41. 1 Keb. 178. pl. 143.

One Covenant not
pleadable in Bar to ano-
ther Covenant.

A Covenant to repair Copyhold Land, runs with the Land. 3 Lev. 326. Also Assignees of the Reversion of Copyhold Lands shall take Advantage of Covenants, upon the Statute of 32 H. 8. cap. 34.

Covenant to repair
Copyhold Lands, runs
with the Lands, by the
32 H. 8. cap. 34.

A. Covenants to raise 400 Soldiers, and bring them to such a Port; and B. was to find Shipping, for which he was sued upon the Covenant, tho' the other had not raised the Soldiers: For that can only be alledged in Mitigation of Damages, and is no Excuse for the Defendant. 2 Mod. 75, 76.

A. covenants to do an
Act;

Yet an Action lies for
him;
And the other must
have his Remedy over.

The Assignee shall have an Action of Covenant upon the Words, *Demise* and *Grant*, &c. 4 Rep. 80.

Assignees shall have
Covenant upon the
Words, *Demise, Grant, &c.*

Where a Covenant extends to a Thing *in esse*, as a House, &c. part of the Demise, it runs with the Land, and shall bind the Assignee, altho' he be not named. But when it extends to a Thing which had no Essence, as the building of a Wall upon Part of the Land; there the Assignee, if not named, shall not be bound, but the Lessee, his Executors or Administrators, are. 5 Rep. 16. a, b.

Where the Assignee
shall be bound by the
Lessee's Covenant, and
where not.

If the Lessee, for himself and his Assigns, had covenanted to make a new Wall upon the Premises; because it is to be made upon the Land demised, it shall bind the Assignee who is to have

Where if named, and
where if not.

the

Covenant.

the Benefit of it : But if it had been a collateral Thing to the Land, it shall not bind, tho' he be named. 5 Rep. 16. b.

Upon a Lease for Years of a Cattle, the Assignee is not bound, but only the Covenantor, &c.

Demise and Lease is a Covenant.

Condition to perform Covenants is broken upon the Non-performance of Covenants in Law.

No good Breach, except the Recovery be shewn to be by Eigne Title.

An exprefs Covenant qualifies a general Covenant in Law, and how.

Where Performance of a Covenant ought to be pleaded specially.

That Land is of such a Value notwithstanding any Act done or to be done, how to be.

of that Value ; but adjudg'd for the Plaintiff, for the Word *Notwithstanding* cannot extend as well to the Time of the Covenant made, as to the Time future. *Cro. El. 43. pl. 4. 44.*

A Lease for Years is made of Cattle or Goods, and the Lessee covenants for himself and his Assigns, to re-deliver them at the End of the Term : Here is no Privity, nor Reversion, but a *Chose en Action*, which can bind only the Covenantor, his Executors and Administrators. 5 Rep. 16. 17.

A Man leases for Years by the Words, *Grant and Demise*. If the Assignee of the Lessee be evicted, he shall have Covenant. 5 Rep. 17. a.

A Bond with Condition to perform Covenants is forfeited upon the Breach of a Covenant in Law, as *Demise, Grant, &c.* For the Defendant was obliged to perform all Covenants, Grants, &c. which extends as well to Covenants in Law, as to Covenants in Fact. 4 Rep. 80. b.

Altho' the Recovery was by Verdict, yet the Plaintiff ought to shew, that the Party who recovered had an Eigne Title. 4 Rep. 80. b.

An exprefs Covenant qualifies the Generality of the Covenant in Law, and restrains it by the mutual Consent of both Parties, so that it shall not extend further than the exprefs Covenant. 4 Rep. 80. b.

Where an Act is to be done according to a Covenant, he who pleads Performance of it ought to plead it specially. 1 Leon. 136. Case 186.

The Defendant covenants that the Land is of the Value of 1000*l. per Annum*, and so shall continue notwithstanding any Act done or to be done by him : A Breach was assigned that they were not

Covenant

Covenant to stand seised.

Sec. { Bargain and Sale.
Uses.

A Deed in Consideration of natural Love and Affection, which he bears to any of his Blood, wherein the Covenantor covenants with another for him and his Heirs, that the Covenantor and his Heirs shall and will from henceforth stand and continue seised of and in, &c. and so go on with the Uses, is that which we call a Covenant to stand seised, and hath its Being from 27. H. 8. Of Uses.

A Covenant to stand seised, what.

27 H. 8. rap. 10.

Note, A Covenant to stand seised always operates by way of raising an Use, never to have an Action of Covenant upon. 2 Lev. 7.

How it operates.

Tenant in Tail, in Consideration of a Marriage of his Son, covenants, not that he shall stand seised, but that the Land shall after his Death remain and come to his Son and his Heirs: And adjudged, that this was only a Covenant executory, for which only an Action of Covenant lay, and did not vest the Estate: Also if he had covenanted that he should stand seised for his Life, which was all that Tenant in Tail could legally do, the Limitation after his Death had been void. *Cro. Eliz.* 279. pl. 8. 280.

Tenant in Tail covenants to stand seised, *quid operatur.*

The Consideration of Nature is the most favourable Consideration which can be; but a bare Covenant without a Consideration will not change an Use. *Poph.* 50.

Nature, a good Consideration.

A Covenant without a Consideration will not change an Use.

There are no Considerations now to raise Uses upon Covenants to stand seised, but natural Love and Affection, which is for Advancement of Blood, or Consideration of Marriage, which is the joining of the Blood and Marriage together; other Considerations, as Money for Land, or Land for Money; though the Words are *stand seised*, yet they are Bargains and Sales, and without Inrollment they raise no Use. *Carter* 139. See 138.

What Consideration will now raise an Use by Covenant to stand seised, and what not.

Where there must be an Inrollment.

Covenant to stand seised.

In Consideration of natural Affection to a Son, and 100 l. will by the Words *natural Affection* raise an Use, but the 100 l. without those Words or Inrollment of the Deed will not.

The Difference between a Feoffment to Uses, and a Covenant to stand seised to Uses.

Upon a Feoffment to Uses all the Estate is out of the Feoffor.

but the Uses are raised out of the Possession of the Feoffees. *1 Leon. 197.*

In a Covenant to stand seised, so much of the Use as the Owner doth not dispose of, remains in him.

How the Uses shall rise and draw the Possession out of him.

Possession shall remain in him until a lawful Use shall arise. *1 Leon. 197. 1 Ventr. 374. 1 Mod. 159, 160, 161.*

How Leases to be made upon a Proviso in a Covenant to stand seised, and how in a Feoffment to Uses.

How it is where Tenant in Fee covenants to stand seised to the Use of himself in Tail.

How it is in Case of a Son's Wife.

Heirs until Marriage, and afterwards to the Use of himself for Life, and after to his Son and Wife, and the Heirs of their two Bodies: Ad-

A bare Marriage with a Stranger, no Consideration to raise an Use.

But for the establishing in his Name and Blood had been good.

In Consideration of natural Affection to my Son, and of 100 l. paid by him, I covenant to stand seised; the principal Consideration, *viz.* the natural Affection, says *Bridgman*, will carry it without any Inrollment. *Carter 144. 138. 2 Ventr. 266. 4 Mod. 150.* But a Consideration of 20 l. only will not carry it to a Son without Inrollment. *1 Lev. 56.* See Title Uses.

Where a Man makes a Feoffment to Uses, he parts with all the Estate out of him by the Livery; but where he covenants to stand seised, he hath a Possibility of having the Estate again upon the *cestuy que use's* refusing to accept. *2 Sid. 157.* But it is otherwise in case of a Feoffment; for where Uses are raised by a Feoffment, all is out of the Feoffor; the Land is gone, the Use is gone, the Trust is gone, and nothing remains to the Feoffor; *1 Leon.*

In case of a Covenant to stand seised, so much of the Use as the Owner doth not dispose of, remains still in him. *1 Ventr. 374.*

Where an Use is raised by way of Covenant, the Covenantor continues in Possession; and there the Uses limited (if according to Law) shall rise and draw the Possession out of him; but if not, the Possession shall remain in him until a lawful Use shall arise. *1 Leon. 197. 1 Ventr. 374. 1 Mod. 159, 160, 161.*

Where in a Covenant to stand seised there is a Proviso to make Leases for Years, how the Leases ought to be, and where good, and where not, see in Title Proviso in Deeds.

How it is where Tenant in Fee-simple covenants to stand seised to the Use of himself in Tail, see *Moor 495, and 503.*

A Man covenanted, in Consideration of a Marriage to be had by his Son with the Daughter of J. S. to stand seised to the Use of himself and his Heirs until Marriage, and afterwards to the Use of himself for Life, and after to his Son and Wife, and the Heirs of their two Bodies: Adjudged, that this is no Consideration to raise an Use; for the Consideration is only the Marriage of his Son with a Stranger, which as to the changing of the Possession is not any Benefit to the Father, who is a Stranger to this personal and particular Consideration. But if the Consideration had been for the establishing of the Land in his Name and Blood, it had been good; for that only touch'd the Father.

Covenant to stand seised.

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Father. 1 *Brownl.* 193. *Telo.* 57. But *Cra. Jac.* 168. it was held, that in Consideration of his Affection for his Son he covenanted to stand seised to the Use of his Son for Life, and afterwards to the Use of such Wife as he should marry for Life, was a good Use; for the Consideration extends to the Wife, which should be as if it had been a Consideration of Marriage; for the Love and Affection to the Son extends as well to the Wife which should be, as if it had been in Consideration of a Marriage.

But to the Use of such a Woman as he should marry, held a good Consideration.

Where a Man limits his Estate to the Use of his Wife for Life, this imports a sufficient Consideration in it self. 7 *Rep.* 40. a.

Wife is a good Consideration.

If I covenant to stand seised to the Use of my Wife, Son, or Cousin, this will raise an Use without any express Words of Consideration, for sufficient Consideration appears. *Ibid.* 40. b.

Wife, Son or Cousin, are good Considerations.

Counsel and Counsellor,

See Trespass.

A Counsellor ought not to set his Hand to a frivolous Plea or Demurrer to delay a Trial. (*Mich.* 22 *Car. B. R.*) For it is not fair Practice, and it doth argue Ignorance, or foul Practice in him that doth it.

Counsellor ought not to set his Hand to a frivolous Plea or Demurrer.

After the Court hath delivered their Opinions of the Matter in Law depending before them; the Counsel at the Bar ought not to urge any thing more for the Client in that Cause. (*Mich.* 22 *Car. B. R.*) For it is uncivil not to acquiesce in the Judgment of the Court; but he ought to seem satisfied therewith.

When the Court have delivered their Opinion, the Counsel ought to urge nothing farther.

One that is indicted for Felony may have Counsel assigned him to speak in Matters of Law, which may arise upon the Indictment. (*Pasch.* 23 *Car. B. R.*) But not in Matters of Fact, for of those he shall not be presumed to be ignorant, though he may be of Matters in Law.

A Man indicted of Felony may have Counsel to speak to Matters of Law arising on the Indictment.

This Court will not assign Counsel upon an Indictment *in forma pauperis*. (*Pasch.* 23 *Car.* 1649. *B. R.*) But Counsel must be assigned by Warrant under the Hand of the Lord Chief Justice, or any other of the Ju-

Court will not assign Counsel on an Indictment *in forma pauperis*.

stices,

stices, that the Counsel may have it in his Hand to shew the Court if they require.

Counsel for a Felon must be assigned by the Court.

Government as well as to the Party.

Advice not to pay a Poor-Tax is a Contempt.

King's Serjeant ought not to argue against King's Patentee.

One who had been of Counsel for the Defendant excused from giving Evidence for the Plaintiff.

What a Counsellor may do for his Client; if false, at the Peril of the Informer.

true or false; for it is at the Peril of him who informs him. *Cro. Jac. 90. pl. 18.*

A Counsellor is not bound to sign Bills for a small Annuity, but only to give his Advice.

A Counsellor shall not be put to answer what he knows only as a Counsellor.

Counsel to be allowed for the Person indicted: *7 Ill. rap. 3.*

What Witnesses to overt Acts in Treason.

When to be presented.

What Cases Judgment shall not be stay'd after a Verdict upon Indictments.

Where Counsel is assigned to one that is indicted for Felony, the Counsel assigned ought to be by Rule of Court. (*Pasch. 24 Car. B. R.*) Because it is a publick Act of the Court in relation to the

Advice of a Counsellor not to pay a Poor-Tax, is said to be a Contempt. *2 Keb. 7. pl. 17.*

That the King's Serjeant ought not to argue against the King's Patentee. *Idem 608. pl. 43.*

Vide 1 Keb. 505. Where one having been Counsel for the Defendant, desired to be excused to be sworn on the general Oath as Witness for the Plaintiff, to give the whole Truth in Evidence, which the Court after some Dispute granted.

A Counsellor at Law retained hath a Privilege to enforce any thing which is informed him by his Client, and give it in Evidence, if pertinent to the Matter, and is not to examine whether it be

A Counsellor who hath but a small Annuity of 40 s. per Annum, is not bound to set his Hand to Bills, but only to give his Advice. *Cro. Jac. 482. pl. 17. Jones 215.*

A Counsellor as to what he knows only as a Counsellor, shall not be put to answer. *Chanc. Rep. 277.*

By the Statute of 7 W. cap. 3. any Person accused and indicted for High Treason and Misprision of Treason, may demand a Copy of the whole Indictment, but not the Names of the Witnesses, five Days at least before the Trial, paying for the same, not exceeding 5 s. and shall be allowed to make his full Defence by Counsel, not exceeding two, to be assigned by the Court.

That there shall be at least two Witnesses, either both to the same overt Act, or one to one overt Act, and another Witness to another overt Act of the same Treason.

Indictments of Treason are to be presented within three Years after the Offence committed.

No Indictment shall be quash'd, or Judgment stay'd after Verdict for Miswriting, Mis-spelling, or improper Latin; but a Writ of Error may be brought thereupon.

Count, See Declaration.

County.

County,

A House or Land may be extraparochial in a County, but they must be in some County. For if they should not be within the County, and subject to the Laws of the County, what Power or Laws could they be under? And without Laws, and Officers to put them in Execution, there can be no Subsistence.

Tho' Land may be extraparochial, it must be in some County.

Where a County is indicted for the Repairs of a Bridge, it is not sufficient for them to plead Not guilty; but they must shew who is bound to repair, and traverse that they ought to repair. 2 Lev. 112.

How a County must plead, where indicted for the Repairs of a Bridge.

County Court, See Courts and their Jurisdictions.

County-Palatines.

Of County-Palatines, what they are, and by whom made; the Natures of them, and of their several Courts. Davis's Rep. from 58. b. to 66. a. b.

Of County-Palatines and their Courts.

Some Part of the County of Chester is not within the County-Palatine of Chester. Mich. 22 Car. 1. B. R. But *quare* what Part.

Some Part of Chester not within the County-Palatine.

Court-Baron.

See Courts and their Jurisdictions.

A Prescription to hold a Court-Baron before the Steward is not good, but it must be *coram Secſatoribus*.

A Court-Baron is incident to a Manor, tho' not held within Time of Memory.

What a Bailiff may do with Goods upon a *Levari*.

Where the Lord may sell a Distress.

No Steward in a Court-Baron can amerce or fine.

A Prescription to hold a Court-Baron before his Steward is not good, but it must be *coram Secſatoribus*; but he might have Prescription to be holden before his Steward, but that is not a Court-Baron. *Cro. Jac. 582. pl. 2.*

A Court-Baron may be held in any Place within the Manor, but not out of it; and although no Court hath been held in the Manor within the Time of Memory, yet it is not thereby lost; for it is incident to the Manor. *Dal. 61. pl. 15.*

A Bailiff cannot sell the Goods upon a *Levari* from a Court-Baron, and so levy the Money without a Custom; but he may deliver the Goods to the Recoveror. That the Lord may sell a Distress taken for a Fine. *Noy 17.*

By the Common Law no Steward of a Court-Baron hath Authority to assess Amercements or Fines. *1 Leon. Case 299.*

Court of Piepowder.

A Piepowder Court,
what.

A Piepowder Court is for Fairs and Markets, and Causes arising there; but a Court of Piepowder so termed from the Speed thereof, may be by Custom in Villages or Boroughs for any Causes, as Debts upon Bond; or otherwise. *Cro. Jac. 313. pl. 14. 2 Inst. 272. Cro. Car. 46.*

A Court of Piepowder may as well be to a Market as to a Fair. *Cro. El. 773.*

A Piepowder Court may be as well to a Market as a Fair.

An Action for Words is not proper for a Piepowder Court, that being only for Matters of Contracts arising within the Market, or Batteries, or for Disturbances there. *Cro. El. 774.*

What Matters are properly triable there.

A Court which is styled a Court of Piepowder, shall be intended only for Markets and Fairs, unless in other Cases, for other Matters, it be set forth to be held by Patent or Prescription. *Cro. Car. 45. pl. 5. 46. Moor, Case 1116.*

Where it must be set forth how it is holden, viz. either by Patent or Prescription.

In a Court of Piepowder the Plaintiff or his Attorney, if required by the Defendant, must swear in the Presence of the Defendant upon the Declaration, that the Contract or Deed contained in that Declaration, was made or committed within the Fair, and within the Time of the Fair, otherwise the Court shall not hold Plea of any such Action; and although the same be sworn, the Defendant may plead in Abatement or to the Action, that the Matter in the Declaration was not committed or done within the Fair, but elsewhere out of it. *17 E. 4. cap. 2.*

The Plaintiff or his Attorney in a Court of Piepowder must swear that the Cause of Action did arise within the Fair. *1 R. 3. cap. 6. 17 E. 4. cap. 2.*

The Complaint must be entered the same Day of the Cause of Action, and not before or after. *Moor, Fol. 624.*

When the Complaint must be entered.

Court

Court of Chancery.

See Courts.

Court of Chancery,
what.

The Court of Chancery is on the Petty-
Bag Side a Court of Law, being a Court
of Record; and on the other Side it is a
Court of Equity.

Master in Chancery
cannot take an Oath but
in a Cause depending in
that Court.

A Master of the Chancery has not Power to
take an Oath, but in a Cause which is depending
in the Court of Chancery. (*1 Car. 1. B. R.*) If he
do, it is taken *coram non Judice*, and is of no Va-
lidity; nor can it be read in this Court. And so
it has been often adjudged.

Court of Chancery
may sit when and where
they please.

The Chancery is not a fix'd Court, neither in re-
spect of the Place where it sits, nor of the Time
when they may sit: For they may sit out of the
Term, and in what Place they please. By *Rolle, Ch. Justice, 12 Nov.*
1650. B. S. Tho' generally they do it not, but sit principally in
Term-time, and at *Westminster-Hall*.

Chancery will relieve
against an Award ob-
tained by ill Practice.

The Chancery will give Relief against an Award
obtained by ill Practice. *1 Saund. 327.*

Warden of the Fleet
cannot imprison a Man
without a Writ, though
by Order of Court he
stands committed to that
Prison.

No Man ought to be taken or imprison'd by the
Warden of the Fleet, or by his Precept, for not
obeying a Decree of Chancery, without a Writ
awarded out of it for the taking of him, although
the Court orders, that he shall stand committed to
the said Prison. Adjudged (*Hill. 21 & 22 Car. 2.*)

in an Action of Trespas for Assault, Battery and False Imprisonment.
See *2 Saund. 182.*

Leave given to amend
an Answer.

The Court gave the Defendant Liberty to amend
her Answer, she being surprized therein. *Chanc.*
Rep. 29.

A Rule, That he that
will have Equity must do
Equity.

He that will have Equity to help, where the
Law cannot, shall do Equity to the same Party
against whom he seeks to be relieved in Equity.
Chanc. Rep. 97.

Court of Chancery.

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Chancery cannot help in Equity against an Act of Parliament. *Chanc. Rep.* 228.

There can be no Entail of an equitable Redemption. *Chanc. Rep.* 219.

An Equity of Redemption is transferrable from one to another. *Chanc. Rep.* 219.

A Decree to foreclose Tenant in Tail from Redeeming, concludes his Issue, and also the Remainders. *Chanc. Rep.* 220.

A Letter of Attorney and Livery supplied in Chancery. *Chanc. Rep.* 241.

Matters of Equity ought to be determined in the Court of Chancery, which hath had Jurisdiction, Time out of Mind. *Co. 12 Rep.* 113. See 4 *Inst.* 78, 79. 2 *Inst.* 552, 553, 554. 1 *Lev.* 242.

The Chancery may hold Plea of *Sci' fa'* to repeal Patents, Petitions, *Monstrans de Droit*, Traverses of Offices. 4 *Inst.* 79. So of Executions upon Statutes-Staple, or Recognizances, upon 23 *H. 8.* in the Nature thereof: But the Execution upon a Statute-Merchant is returnable in the King's Bench or Common Pleas. 4 *Inst.* 79.

It is said in the 1 *Lev.* 242. *arguendo*, That equitable Causes were anciently heard by the King himself, and sometimes by Reference to the Chancellor; and that the first Statute which gave Countenance to this Court, was the 36 *E. 3. cap. 9.* But such Cases were rare till Edward IV's Time, when they encreased by Occasion of Uses. See 12 *Co.* 113. that the Court of Chancery hath had a Jurisdiction, Time out of Mind.

Where no Fraud or Covin is, a Court of Equity will not relieve. *Cro. Car.* 191.

The Wife was allowed to sue in Chancery for her separate Maintenance, without her Husband. *Chanc. Rep.* 35.

Note, The Chancery Orders are but in Paper, and not of Record, but triable *per Pais.* *Yelv.* 227.

The Chancellor cannot by a Decree bind the Right of the Land, but can only bind the Person; and if he will not obey, he may commit him to Prison until he obeys it. 27 *H. 8.* 15. But where there hath been an ancient Possession, he may make an Order for the quieting of it, but cannot give Damages. 3 *Bulst.* 34. *Litt. Rep.* 166.

The Benefit of an Agreement for the Purchase of Lands was devised and decreed to the Devisee. 1 *Chanc. Cases* 173, 174, 208, 212. Also agreed, That where a Man contracts for Land, by this the Vendor becomes a Trustee for the Purchaser, and the Purchaser may devise. 1 *Chanc. Cases* 39.

No Equity against an Act of Parliament.

No Entail of an Equity of Redemption.

An Equity of Redemption is transferrable.

Tenant in Tail his Issue and Remainders are foreclosed by Decree.

A Letter of Attorney and Livery supplied.

Where Matters of Equity are to be determined.

Of what Matters the Chancery may hold Pleas.

23 *H. 8. cap.*

Statute-Merchant is returnable in the King's Bench or Common Pleas. 4 *Inst.* 79.

Equitable Causes anciently heard before the King.

36 *E. 3. cap. 9.*

that the Court of Chancery hath had a Jurisdiction, Time out of Mind.

It will not relieve where there is no Fraud or Covin.

Where a Wife may sue without her Husband.

Their Orders but in Paper.

A Decree binds not the Land, but only the Person.

May quiet an ancient Possession, but cannot give Damages.

An Agreement for the Purchase of Land may be devised.

The Vendor becomes a Trustee.

Will not relieve against an express Maxim of Law.

Will relieve against a dormant Title for Improvements.

Costs to be paid up on a Dismissal of the Bill. Stat. 4 & 5 Ann.

No Copy or Tenor of the Bill shall go with the *Dedimus*.

The Recompence allowed for it.

and also the whole Fee or Fees, of and for all small Writs made by the said sworn Clerks.

No *subpoena* to be made out until Bill filed, unless in Case of Injunctions to stay Waste or Suits at Law.

thereof brought to the *Subpoena* Office, or to him who usually makes out *Subpoena*'s, or other Process, in the several Courts of Equity, under the Hand of the Six-Clerk, or other Officer, who usually files Bills in Equity; for which Certificate he shall receive no Fee.

A Certificate of the filing of the Bill.

Where Equity will not suffer a Penalty to be demanded:

And where it will.

a greater, and failure of Payment; *dubitatur*, whether upon Payment after, with Damages, Benefit shall be taken of this Agreement. 1 *Chanc. Cases* 110, 111. But a voluntary Agreement is not binding in Equity, if the Condition thereof is not precisely performed. 1 *Chanc. Cases* 301, 52.

A voluntary Agreement where not binding.

He that takes a Security by Penalty, rests there.

A Statute shall be satisfied by an Executor before a Decree:

So likewise a Bond.

Court of Chancery.

The Chancery will not relieve against an express Maxim of the Common Law. 4 *Rep.* 124. a. See *Danv.* 754, 755. &c.

Chancery will relieve a Purchaser of a Term against a dormant Title, when Money hath been laid out upon Improvements. 2 *Lev.* 152.

By the Statute of 4 & 5 *Ann.*, the Plaintiff shall pay full Costs, to be tax'd by a Master, upon the Dismissal of his Bill in Equity, either by himself, or by the Defendant, for want of Prosecution.

Also, by the same Statute it is enacted, That no Copy, Abstract, or Tenor of any Bill in Equity, do go with the *Dedimus*, or Commission for taking of the Defendant's Answer: But in Lieu and Recompence thereof, the Sworn Clerks of the Court of Chancery shall take to their own Use, in all Causes, the whole Term-Fee of 3 s. and 4 d.

By the same Statute it is enacted, That no *Subpoena*, or other Process for Appearance, shall issue out of any Court of Equity, until after the Bill is filed with the proper Officer, (except in Cases of Bills for Injunctions to stay Waste or Suits at Common Law commenced) and a Certificate

Equity will not suffer a Penalty to be demanded, if the Party will perform that for the Non-performance whereof the Penalty was given. 2 *Chanc. Cases* 88. But where there is an Agreement to accept a lesser Sum at a precise Day, in lieu of

to accept a lesser Sum at a precise Day, in lieu of a greater, and failure of Payment; *dubitatur*, whether upon Payment after, with Damages, Benefit shall be taken of this Agreement. 1 *Chanc. Cases* 110, 111. But a voluntary Agreement is not binding in Equity, if the Condition thereof is not precisely performed. 1 *Chanc. Cases* 301, 52.

He that takes a Security by Penalty, sets up his Rest there, and makes himself Judge of what he would have, and therefore ought not to have more. 1 *Chanc. Cases* 24, 16.

A Court of Equity cannot compel an Executor to perform a Decree made there against the Testator, before the Statute by him acknowledged. *M.* 12 *Jac.* Also a Bond becoming due after the Death of the Testator, shall be satisfied before the Decree. *Style, Rep.* 38.

Court of Chancery.

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It was offered by Counsel, that where Tenant in Tail bargain'd and sold his Land, that seeing he had a Power over it, altho' there was no Fine or Recovery, yet a Court of Equity would decree against the Heir: But the Chancellor said, That he would not supersede Fines and Recoveries; but only Tenant in Tail in Equity, this Court would decree such Disposition good: For a Trust and equitable Interest is a Creature of their own, and therefore disposible by their Rule. *2 Ventr. 350.*

Where the Court will not decree against the Heir of Tenant in Tail upon a Bargain and Sale.

where a Man was

A Trust and equitable Interest disposible by the Chancellor.

In *2 Ventr. 350, 351.* the Court would not decree Infants to be foreclosed till they came of Age; (tho' sometimes 'tis so done) because the Mortgage depended upon a disputable Title.

What the Court will do in case of Infants, when a Foreclosure is sued for.

A Man is not bound to discover the Consideration of a Bond, which implies in it self a Consideration. *Hard. 200, 201.*

Not bound to discover the Consideration of a Bond.

Lessee for Years, without Impeachment of Waste, towards the end of his Term intends to cut down all the Timber-Trees: An Injunction lies out of Chancery to stop it, notwithstanding the Agreement of the Parties: Because it is against the publick Good to destroy the Trees; and the Suit there is to hinder it, and not to have any Damages when done. *M. 14 Ca. 1. Salwaie's Case:* And *2 Chanc. Rep.* my Lord Chancellor declared, That he would stop the pulling down of Houses, or defacing of Seats by Tenant after Possibility, or Tenant for Life, dispunishable of Waste by express Grant, or by Trust.

An Injunction lies against Lessee for Years, without Impeachment of Waste.

That which may be tried by a Jury, is not triable in Chancery; for in the first Case, if the Jury give not their Verdict according to Evidence, an Attaint lies; but in the other, there is no Remedy. *4 Inst. 85. Hard. 51.*

So also against Tenant after Possibility. And Tenant for Life.

What is triable at Law, is not in Chancery.

Where the Decree is for Payment of Money, no Bill of Review ought to be brought till paid; but this hath been dispensed with in some Cases. *1 Chanc. Rep. 42.*

Not to review a Decree for Payment of Money.

If an Executor is Defendant in Equity, and there is a Decree against him, he shall not pay Costs, (tho' an Executor Defendant at Law pays Costs) for he cannot plead it at Law in Excuse of Affets. *Hard. 165.*

An Executor Defendant pays no Costs in Equity, altho' he doth in Law.

In a Bill to perpetuate Testimony, if the Plaintiff prays Relief, the Bill shall be dismissed. *2 Ventr. 366.*

No Relief to be prayed in a Bill to perpetuate Testimony.

If a Man devises, that his Debts shall be paid out of his Real and personal Estate; if the Executors pay more than his personal Estate, they shall be reimbursed out of the real Estate. *2 Chanc. Cases 100.*

A Devise for Payment of Debts out of the real and personal Estate.

A Devise

Upon a Devise for
Payment of Debts.

A Devise that his Lands in B. shall be sold for the Payment of his Debts; and that if those were not sufficient, then by the Sale of his Lands in C. and if those were not sufficient, then for Sale of his Lands in D. and devises 500 l. per Annum out of his Lands in D. The Trustees sold the Lands in B. and Part of the Land in D. so that the Residue was not sufficient to answer the Annuity; and therefore decreed, That the Lands in C. should be sold for the Payment of the Arrears of the Annuity.

What Lands shall be
charged.

1 Chanc. Cases 295.

Upon a Mortgage and
Devise for Life, Remain-
der in Fee, both shall
contribute.

If A. mortgages Lands for 100 l. and then de-
vises to B. for Life, Remainder to C. in Fee; C.
may compel B. to pay his Share of the 100 l.
1 Chanc. Rep. 234. viz. The Tenant for Life to pay
one Third, he in Remainder two Thirds. 1 Chanc. Rep. 271.

Who is not bound to
discover.

A Purchaser for a valuable Consideration is
not bound to discover his Title. 2 Chanc. Cases 47.

Where the Defendant
may plead, That he is a
Purchaser for a valuable
Consideration.

A Bill is brought to be relieved upon a Trust,
and charges the Defendant with Notice before his
Conveyance; the Defendant may by Answer deny
the Notice, and plead, That he is a Purchaser for
a valuable Consideration, without shewing what

the Consideration was. Mich. 13. Car. 2. inter Moor & Mayehew, 34.
But here he must swear that he had not any Notice 'till after the Con-
veyance executed.

Mortgagor borrows
more Money, the Heir
must pay it if bound in
the Bond.

If the Mortgagor borrows more Money of the
Mortgagee, and gives Bond for it, the Heir of the
Mortgagor shall not redeem, without paying off
the Debt, if the Mortgagor bound himself and his
Heirs in the Bond. 2 Chanc. Cases 164.

A Bill to foreclose
must be brought as well
by the Executor as Heir
of the Mortgagee.

The Heir of the Mortgagee exhibits a Bill to
have the Money paid, or to foreclose: Resolved,
That the Executor of the Mortgagee ought to have
been made a Party, for he may have a Title to
the Money. 1 Chanc. Cases 51.

No Bill for Discovery
of Assets till Suits com-
menced.

There shall be no Bill in Equity against an Exe-
cutor to discover Assets, before a Suit commenc'd
at Law; for perhaps, if he were sued at Law, he
would confess, and pay the Debt. Hard. 115.

The Chancery may
adjourn a Cause to B. R.
to be determined there.

The Chancery, either before or after Issue, may
adjourn any Cause there depending, and transmit
the Record into the King's Bench, there to be de-
termined. 2 Saund. 27. If there be a Demurrer to
Part, and an Issue to other Part, the whole Re-
cord shall be transmitted into B. R. and Judg-
ment given there. 2 Saund. 23, 24. And 1 Mod.
29. it was said, That the Chancery might have

Or may give Judg-
ment upon the Demur-
rer before the Issue
comes into B. R.

given Judgment before the Record came into B. R. 2 Keb. 584,
587, 588, 608.

Where a Peer is to be sued in Chancery, the Lord Keeper writes a Letter to him; and if he answers not, then goes a *Subpœna*; then an Order, to shew Cause why there should not be a Sequestration; and if he still stands out, then a Sequestration goes; for there can be no Process of Contempt against his Person. 2 Vent. 342.

How to proceed in Chancery against a Peer.

If there be an Order, that one shall stand committed to the Fleet for the Breach of a Decree: By this Order only the Warden hath no Power to take and imprison him; but in Pursuance to the Order, there ought to be a Writ awarded to take him. H. 21 & 22 Car. in B. R. *Furlong vers' Bray*.

A Man shall not be taken into Custody by an Order, but it must be by Writ.

Where a Bill is barely to discover a Deed, or only in order to have it produc'd at the Trial, the Plaintiff need not swear that he hath lost it. 1 Chanc. Cases 11. But where a Bill suggests the want of a Deed, and seeks Relief upon the Matter of the Deed, such Oath is necessary. *Ibid*.

Where an Oath is necessary where a Deed is lost, and where not.

A Bill may be brought against several Parishioners for Tithes, because they are of the same Nature: But where it concerns Things of distinct Natures, and is brought against several Persons, which occasions several Answers and Examinations, it is naught. *Hard*. 337.

Where a Bill may be brought against several Persons, and where not.

If Baron and Feme have a Decree for Money in the Right of the Feme, and the Baron dies, the Feme, and not the Baron's Executors, shall have it. 1 Chanc. Cases 27.

The Feme, and not the Baron's Executors, shall have the Money of the Feme, decreed to Baron and Feme.

Where Notice to him that purchases for another shall affect the Purchaser himself. 1 Chanc. Cases 39.

Where Notice to the Agent shall affect the Purchaser.

Notice must be denied by way of Answer, and not by Plea. 1 Chanc. Cases. 161.

Notice must be denied by Answer, not by Plea.

The Court granted both Judgment and Execution after an Injunction, for by the Stat. of 27 Ed. 3. cap. 1. and 4 H. 4. cap. 23. after Judgment, the Party ought to be quiet and submit thereunto; for a Judgment given in the King's Courts ought not to be reversed or avoided but by Error or Attaint: And it is a Maxim, that if a Court of Equity meddles with any Matters properly triable at the Common Law, or which concerns Freehold, it is to be prohibited. *Cro. Jac.* 335. pl. 4, 336. 343 pl. 11. 344, 545.

The Court granted Judgment and Execution, notwithstanding an Injunction out of Chancery.

27 E. 3. cap. 1.
4 H. 4. cap. 23.

Courts, and their Jurisdictions.

See { Admiralty.
King's Bench.
Prohibition.

Courts, what.

Courts are the Places where Justice is judicially administered.

Court of B. R. may command a Prisoner out of any other Court.

The King's Bench may command a Prisoner out of any other Court by *Hab. corpus cum Causa*, before them, though he be in the Tower upon the Privy Councils Commitment.

One committed by the Lord Chancellor brought into B. R. and dismissed.

Cardinal *Wolsey* being Chancellor of England, committed one to the *Fleet*, who was brought into this Court by a *Habeas corpus cum Causa*, and a Day given to the King's Attorney to shew Cause why he should not be delivered, and the Party after two Days was dismissed.

Chief Justice of B. R. committed the Prince.

Gascoigne, Chief Justice, committed the Prince because he would have taken a Prisoner from the Bar.

Inferiour Courts may not plead a Thing by Implication.

Inferiour Courts ought not in pleading to shew a Thing by Implication, but they must set it out expressly. Also Surplusage in an inferiour Court will make Error, for they must keep to their Forms precisely. *Hill. 21 Car. B. R.* For if they should

A Surplusage in an inferiour Court is Error.

be suffered to break their Forms, it would introduce all Barbarism and Confusion, which the Law doth labour to prevent as Things destructive to the Realm.

Jurisdiction of an inferiour Court must be set forth.

The Jurisdiction of an inferiour Court must be set forth, and by what Authority it is held, whether Prescription, or Letters Patents; otherwise it is Error. *Hill. 21 Car. B. R.* For every inferiour

Court must be held one of those Ways, and if no Authority be set forth, this Court will not presume there is any.

Inferior Court cannot take Cognizance of any Thing done out of their Jurisdiction.

No Inferior Court can take Cognizance of any Act to be done out of their Jurisdiction; if they should so do, and the Matter appear upon Record, the Proceedings will be erroneous.

As

As inferior Courts, which are not Courts of Record, cannot hold Plea of Debt or Damages but under 40 s. so the superior Courts which are of Record, cannot hold Plea of Debt or Damages, unless it be 40 s. and upwards. See 2 Inst. 311.

No Court, unless of Record, can fine and imprison. Co. 11. Rep. 43. b.

Some Courts may fine, but not imprison; as the Leet. Co. 11. Rep. 43. b. 1 Roll. Rep. 74, 34.

Some may imprison, but not fine; as the Constables at the Petit-Sessions. Co. 11. Rep. 44. a.

Some Courts cannot fine nor imprison, but amerce; as the County-Court, Hundred, &c. Co. 11 Rep. 43.

Some can neither fine nor imprison, nor amerce, viz. Such Courts as proceed according to the Canon or Civil Law. Co. 11. Rep. 44. a.

The Court of common Pleas is a fixt Court, and must be held in a certain Place, Magna Charta. cap. 11.

The Court of King's Bench is *coram Rege*, and follows him where-ever he goes; and the Original Writs returnable in that Court are *coram nobis ubicunque tunc fuerimus in Anglia*. 2 Inst. 11.

The Court of King's Bench is an High Court; it holds Pleas of all Treasons, Felonies, and whatsoever is done *contra pacem*; also it corrects the Exorbitances and Misdemeanors of all the Inferior Courts in England, and of the Ministers thereof, that they do not exceed their Jurisdictions, nor alter their Forms; for this Court is *Fons Justitiæ*. 22 Car. 2. B. R.

It belongs to the King's Bench to correct not only judicial Proceedings, but also Misdemeanors extrajudicial, tending to the Oppression of the Subjects Rights, or raising of Faction or Debate, or any Manner of Misgovernment, so that no Injury, either publick or private, may be done. 11 Rep. 98. a.

No Record that is removed into the King's Bench, is ever remanded. Show. Rep. 187.

This Court of King's Bench is removeable at the King's Pleasure.

The Courts of King's Bench, Chancery, Common Pleas and Exchequer, are Fundamental Courts, and in pleading of them, you do not begin with a Prescription or Grant, as in Inferior Courts. Hob. 63.

If an Action be brought in an Inferiour Court, of a Matter arising out of their Jurisdiction, the Defendant may, as soon as the Declaration comes in against him, bring his Plea ingross'd under Counsels Hand into Court, setting forth, That the Fact was committed out of the Jurisdiction of the

In what Actions superior Courts may hold Plea, and in what inferior Courts.

Stat. Glouc. 6. c. 1. ra. 8.

What Courts can fine and imprison.

What Courts may fine, but not imprison.

Some may imprison, but not fine.

Some can only amerce.

Spiritual Courts can neither fine nor imprison.

The Court of Common Pleas is a fix'd Court.

The Court of King's Bench.

28 E. 1. rap. 6.

The Court of King's Bench corrects the Misdemeanors of all other Courts.

Fons Justitiæ.

Corrects all Errors and Misdemeanors tending to the Oppression of the Subject.

A Record cannot be remanded out of the King's Bench.

Removeable at the King's Pleasure.

The Courts in Westminster-Hall are fundamental Courts, and how to be pleaded.

What the Defendant must do, when the Matter was not done within the Jurisdiction of the Court.

Court;

Viz. Must plead a Foreign Plea, and swear to it.

Resolution of the House of Commons concerning the Jurisdiction of the Admiralty Court.

Laws of *Oleron*; and so it was held by the House of Commons in Parliament at that time. *Hill. 21 Car. B. R.* The Laws of *Oleron* were particular Laws made at *Oleron*, an Island belonging to *France*, touching Maritime Causes.

In what Case no Prohibition lies to the Court of Admiralty.

If Goods delivered a Ship-board be imbezilled, all the Mariners ought to contribute to the Satisfaction of the Party that lost his Goods; every one of them particularly according to their Proportions, by the Maritime Law or Custom; and the Cause is to be tried in the Court of Admiralty: And in such Cases no Prohibition ought to be granted. *Hill. 21 Car. B. R.* Because the Matter ariseth solely upon a Maritime Custom, whereof the Common Law cannot take Notice.

What the Court of Admiralty may not try.

The Court of Admiralty ought not to try whether a Fact were done in a Place which is comprehended within a League made with a Foreign Prince; or whether the Place be without or not: Nor ought to try whether the League were made at the time of the Fact done or no. *21 Car. B. R.* Because the League may be traversable and issuable at Law.

Where the Party may sue at the Common Law or in the Admiralty.

Where a Contract is made only in *England*; and there is a Conversion beyond Sea, the Party is at his Election to sue at the Common Law, or in the Admiralty. *4 Leon. Case 257.*

A Bond made beyond the Sea may be sued at Common Law, or in the Admiralty-Court.

A Bond made and delivered in *France*, was sued for in the Admiralty-Court: And held that the Bond may be sued here; but the Suit being begun in the Admiralty-Court, we can't prohibit them; for perhaps the Plaintiff's Witnesses are beyond Sea, which may be examined there, but not here. *3 Leon. Case 314.*

Where the Admiralty-Court condemns a Man for a Thing out of their Jurisdiction, it is void.

And if he be in Execution may be delivered upon his *Hab. Corp.*

The Admiralty condemned a Man in 1121. for a Matter done in *New England*, out of the Jurisdiction of the Admiralty; and an Action was brought upon 2 *H. 4. cap. 11.* for suing in the Admiralty-Court, upon a Contract made at Land, and a Recovery thereupon; and afterwards the Party being in Execution for this Matter, and being brought up upon an *Habeas Corpus*, and this Matter returned, the Court held all their Proceedings to be *coram non judice*, and discharged the Prisoner. *Cro. Car. 603. pl. 8.*

The Delegates definitive Sentence in a civil and marine Cause shall be final.

8 *Eliz. cap. 5.*

A Sentence definitive in a civil and marine Cause by Delegates appointed by Commission under the Great Seal, shall be final. 8 *Eliz. cap. 5.*

Courts and their Jurisdiction.

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The Court of Admiralty cannot hold Plea of a Matter arising from a Contract made upon the Land, though the Contract was made concerning Things belonging to the Ship: For such Matters are triable by the Common Law; and though the Contract concerns Things belonging to Sea Affairs, yet this is but collateral; and the Principal which directs Matter to ground the Action upon, is the Contract. But they may hold Plea for Mariners Wages; because they become due for their Labour done upon the Sea: And the Charter-Party and Contract made upon the Land, is only to ascertain them. 3 Lev. 60. See the Statute of 4 & 5 Anne, For the Amendment of the Law.

The Court of Admiralty cannot hold Plea of a Contract, made at Land, tho' for Ship-Matters.

If a Ship be taken by Piracy, or by Letters of Mart, and be not brought *infra presidia* of that King by whose Subjects it was taken, it is no lawful Prize. March 110, 111. pl. 188.

4 & 5 Annæ.

Where a Ship is a lawful Prize, and where not.

By the Custom of the Admiralty Goods may be attach'd in the Hands of a third Person *in causa civili & maritima*; and that upon four Defaults they shall be delivered to the Plaintiff upon giving of Caution to restore them if the Debt or other Cause of Action be disproved within the Year and Day after the four Defaults, if the Party whose Hands they are in refuse to deliver them, then the Custom is to imprison him *quousque*, &c. March 204.

Admiralty may attach Goods for Debt, &c. in the Hands of a third Person.

No Court can set a Fine upon any Person for such an Offence committed by him, for which they cannot discharge him when he hath paid the Fine that is so set upon him. 21 Car. B. R. 4 H. 7. 3. 21 H. 7. 35. For the Fine is paid in lieu of Satisfaction for the Offence, and it is reason that the Party upon his Satisfaction made, should have a Discharge for his Offence committed, or else he may be called in Question again for one and the same Offence.

No Court can fine a Man, if they cannot discharge him upon Payment of the Fine.

The Court ought, *ex Officio*, to take notice of Matters contained in the Record of the Matter depending before them, but they are not tied to search the Almanack to compute the Times of doing Things. 21 Car. B. R. For that ought to be set forth by the Parties, but the Almanack shall be allowed as good Evidence.

This Court is not obliged to search the Almanack to compute the Time when any Act was done, but it ought to be set forth by the Parties.

An inferior Court ought to return a Writ directed to them to stop their Proceedings, although they be not bound to allow the Writ directed to them; and in their Return of the Writ they are to shew specially why they do not allow it, but do proceed notwithstanding the Writ directed unto them. 22 Car. B. R. That they may not seem to contemn the Authority above them, otherwise an Attachment lies against them.

Inferior Court must return a Writ, though not bound to allow it.

If a Court that has not Jurisdiction of a Cause, give Judgment in it, that Judgment is *coram non Judice*.

If a Court which hath no Jurisdiction of the Cause depending in that Court do proceed to Judgment in it; the Judgment is *coram non Judice*, and an Action lies against the Judges who give the Judgment, and any Officer who executes their Process under them; but where they have Authority, and give an ill Judgment, there the Party who executes the Process upon that Judgment shall be excused.

Tho' one has pleaded to the Jurisdiction, he may after allow it, and plead to the Action.

Altho' one plead in Disallowance of the Jurisdiction of a Court, yet he may (afterwards) come in and allow the Jurisdiction, and plead to the Action. *Mich. 22 Car. B. R.* For the Plea is not peremptory, but dilatory, and may therefore be waved.

Court of B. R. may regulate all other Courts.

The Court of King's Bench is to regulate all the Courts of Law throughout *England*, that they do not exceed their Jurisdictions, nor alter their Form.

22 Car. B. R. For it is the highest Court of Judicature in *England* (except the High Court of Parliament) being held *coram ipso Rege*, who is *Fons Justitiae*; and other Courts are but as Streams flowing from this Fountain.

Jurisdiction of the Cinque-Ports extends in some Cases to Matters done on the Sea.

In some Cases the Jurisdiction of the Courts of the Cinque-Ports extendeth upon the high Sea. *Mich. 22 Car. B. R.* This is by special Privileges afforded them in regard of their great Services they are bound upon occasion to perform for the Realm.

B. R. may commit an Attorney for acting contrary to the Rules of the Court.

This Court may commit an Attorney, who is an Officer of the Court, for doing of things against the express Rules of the Court, after due Notice given him of it. *22 Car. B. R.* For this is a Contempt to the Authority thereof.

The superior and inferior Courts differ in their Forms of Proceeding.

The superior Courts at *Westminster*, and the inferior Courts elsewhere, do differ in their Forms in Proceeding in many things. *Mich. 22 Car. B. R.* But this is not true of all inferior Courts, for some of them do use the same Forms as are used in the Courts at *Westminster*.

A Court by Letters Patent must proceed according to Common Law.

A Court that holds Plea by virtue of Letters Patent, ought to proceed according to the Course of the Common Law; for no Patents ought to be granted against the Course of the Common Law; but Courts that are Courts by Custom, are not bound to proceed according to the strict Rules of the Common Law; but may proceed according to their Custom. *Mich. 22 Car. B. R.* So that their Customs be not contrary to Law.

County-Court cannot enquire of Damages arising out of their Jurisdiction.

A County-Court, nor any other inferior Court, cannot enquire of Damages arising out of the Jurisdiction of it. *Hill. 22 Car. B. R.* For it hath not Conusance of things arising out of its Jurisdiction.

Courts and their Jurisdiction.

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One ought not to sue to bastardize an Issue after the Death of the Party.

Issue not to be bastardized after the Death of the Party.

Where the principal Matter is triable in the Spiritual Court, and there is (also) a thing incident to this Trial, which is triable at the Common Law, yet a Prohibition shall not there be granted. *Pasch.*

If the principal Matter be triable in the Spiritual Court, Prohibition shall not be granted.

23 *Car. B. R.* *Quia principale trahit ad se accessorium suum.* For the principal Matter being triable in the Spiritual Court, the Common Law is not to intermeddle; for this would obstruct Justice.

In the Universities they hold Pleas by Custom, and Charters confirmed by Acts of Parliament, and do proceed according to the Rules of the Civil Law.

How Pleas are held in the Universities.

23 *Car. B. R.* Such Proceedings suit best with them, because the Civil Laws are written in Latin, and the Civil Law is there only studied.

In the Court of the City of *Exeter*, they proceed in that Manner as they do in the Common Pleas, but they do not so generally in other inferior Courts. *Pasch.* 23 *Car. B. R.* But in *Norwich* they proceed as they do at *Exeter*, agreeing with the Common Pleas.

The Court of *Exeter* proceeds as in Common Law.

At the Common Law Courts in *Westminster-Hall*, the Plaintiff doth not shew at large in his Declaration, that the Cause of Action arises within their Jurisdiction, (their Jurisdiction being general) but inferior Courts ought to shew it at large, *viz. infra jurisdictionem Curiae.* *Pasch.* 23 *Car. B. R.* For they use to shew it at large, and they ought not to vary from their Forms.

In the Courts in *Westminster* it need not be shewn where the Cause of Action arises: But *contra* in inferior Courts.

This Court will not execute the Judgment of an inferior Court removed by *Certiorari.* 1 *Saund.* 98.

B. R. will not execute a Judgment removed up by *Certiorari.*

See 1 *Saund.* 99. Where a Judgment was affirmed in this Court against their own Opinions.

A Judgment affirmed in *B. R.* against their own Opinions.

The Court of King's Bench is a Bench of Eyre in that County wheresoever it sits. *Trin.* 22 *Car. B. R.* For it is not a fix'd Court, as the Common Pleas Court is, but removable *ubicunque, &c.* And it is also such in regard of the large Extent of Jurisdiction in the Conusance of all Matters, either civil or criminal, which it hath in that County where it sits.

Court of *B. R.* is a Court of Eyre.

The Court of Common Council of *London* is not a Court of Record, but only a Court of Advice; and therefore neither a Writ of Error, nor an Attaint doth lie for Matters done in that Court. *Trin.* 23 *Car. B. R.* For there are no civil Matters arising between Party and Party tried there; but only Advice taken by them amongst themselves touching redressing of Things amiss in, and making of Laws for the better governing of, the City.

Court of Common Council of *London* not a Court of Record.

One

In Motion for Arrest of Judgment 'tis too late to object against the Jurisdiction of a Court.

Issue hath allowed the Jurisdiction, and the not having Jurisdiction of the Cause is not sufficient Matter to arrest Judgment upon after Trial:

A Sheriff by his Return may not dispute the Jurisdiction of B. R.

Concerning the Jurisdiction of the Palace-Court of Westminster.

The Palace-Court of Westminster is a Court annexed to no Corporation, nor is beneficial to any Society of Men, but the Officers thereof; and from the Tunnel of Whitehall, and twelve Miles from thence in compass, its Jurisdiction reacheth, and it is called the Palace-Court. By Rolle Chief Justice, Mich. 24 Car. B. R. Originally it was called the Marshal's Court, and had Consuance only of Matters in Difference arising amongst the King's Menial Servants, but afterwards by Corruption it extended its Power much farther, to the Grievance of the people.

The Chancery may adjourn any Cause to the Courts of Common Law, and transmit the Record into B. R.

If one of the Defendant's in Chancery pleads to Issue, and the other demurs, the Record ought to come intire into B. R. who will give Judgment upon both Verdict and Demurrer.

Statute of Jeofails extends to inferior Courts.

fore) largely expounded. Pasch. 24 Car. B. R. For *omne bonum est sui diffusum*: Adjudged also *inter Walwyn and Smith*, and *Phyler and Boson*, B. R. 3 W. & M.

A Court cannot be held by Custom, and Letters Patent also.

Extent of the Authority of B. R.

B. S. And upon good Reason, for civil and orderly Deportment of Men in their ordinary Conversation, doth tend very much to the Maintenance of the publick Peace, with which this Court is principally intrusted.

One ought to speak against the Jurisdiction of the Court, by pleading to it, and not by speaking in Arrest of Judgment. Mich. 23 Car. B. R. For then it is too late; for the Party by pleading to Issue hath allowed the Jurisdiction, and the not having Jurisdiction of the Cause is not sufficient Matter to arrest Judgment upon after Trial:

A Sheriff by his Return ought not to dispute the Jurisdiction of this Court. 2 Saund. 193.

The Palace-Court of Westminster is a Court annexed to no Corporation, nor is beneficial to any Society of Men, but the Officers thereof; and from the Tunnel of Whitehall, and twelve Miles from thence in compass, its Jurisdiction reacheth, and it is called the Palace-Court. By Rolle Chief Justice, Mich. 24 Car. B. R. Originally it was called the Marshal's Court, and had Consuance only of Matters in Difference arising amongst the King's Menial Servants, but afterwards by Corruption it extended its Power much farther, to the Grievance of the people.

The Chancery, it is said, may adjourn any Cause there pending at the Common Law, and transmit the Record of it into this Court to be determined, either after or before Issue or Demurrer joined. 2 Saund. 25, &c.

And where in Chancery one of the Defendants pleads to Issue, and the other demurs, the Record ought to come intire into the King's Bench. *Idem* 26, &c. And in this Case the Court of King's Bench will give Judgment upon the Verdict and Demurrer both, and the Record shall not be remanded into Chancery. *Idem* 27.

The Statute of Jeofails doth extend to inferior Courts; for it is a beneficial Law, and to be (therefore) largely expounded. Pasch. 24 Car. B. R. For *omne bonum est sui diffusum*: Adjudged also *inter Walwyn and Smith*, and *Phyler and Boson*, B. R. 3 W. & M.

A Court cannot be held by Custom, and by Letters Patents also; for if one have a Court by Custom, and he purchase Letters Patents, and holds the Court by them, the Custom is extinguished, Mich. 24 Car. B. R. By interrupting it, and holding the Court by another Authority.

This Court hath Authority to reform Abuses in the Behaviour and Carriages of all Persons whatsoever throughout England. Hill. 1649. Feb. 9.

The Parliament cannot take away the Jurisdiction of this Court, without Words in the Negative, that is, That it shall nor do thus or thus. 10 Feb. 1650. B. S. For if it only say it shall do so or so, the Court may do what is enjoined, and also what it might have done before, for here is no Restraint.

The Parliament cannot take away the Authority of B. R. without negative Words.

This Court is not to be open longer than the Continuance-Day, which is about eight or ten Days after issuable Terms, and about half that time after the other Terms, during which Time common Rules are entred, and also Issues are joined. Trin. 1651. B. S. For that Time is enough to dispatch such Business.

How long the Court of B. R. is to continue open.

All Courts of Record are originally the King's, Mich. 1651. B. S. And derived from him as the Fountain of all Justice.

All Courts are originally the King's.

Where one is elected Constable, and refuses to serve the Office, this Court may issue out a Writ of *Mandamus* to compel him to do it; so also they may do in case of several other Officers. For where ordinary Means will not serve, this Court may interpose.

May grant a *Mandamus* to compel an Officer who is elected to serve the Office.

Also this Court will grant a *Mandamus* to restore an Officer turned out, *vel causam significare*; but it cannot command the electing of a particular Person to be an Officer.

Also to restore an Officer turned out, *vel causam significare*.

One may sue in the King's Bench Court, Actions upon the Case, and Trespas and Ejectment, and other Trespas by Original, as well as he may by Bill: But the common and most usual Way is by Bill. But upon a Judgment in the King's Bench, where it is by Original, no Writ of Error lies, but in Parliament.

Where Suit may be in the King's Bench by Original.

Where a Suit is commenced in this Court by Original, or is removed into this Court by Writ of Error out of the Common Pleas: In all Cases after Judgment, where the Cause was commenced by Original, the Defendant may in this Court be outlawed after Judgment, as the Course is in the Common Pleas.

Where Outlawry, after Judgment, lies in the King's Bench.

If the Issue be, Whether a Wife, or not a Wife, it is triable at the Common Law: But whether lawfully married, or not lawfully married, is triable by a Certificate from the Ordinary. For a Marriage is pleaded to be according to the Laws of the Holy Church, *viz.* the Ecclesiastical Law, and therefore most proper for them to determine, whether the Marriage was solemnized accordingly; and that is by Certificate of the Bishop, upon *Ne unques accouple en loyal Matrimony*: But whether married or not, is triable at the Common Law; for this is Matter of Fact, and not Matter of the Spiritual Law, and so not determinable by the Judges thereof, no

Wife or not Wife, is triable at the Common Law: But lawfully married or not, by Certificate of the Ordinary.

more than Matters of Spirituality are triable by the Judges of the Common Law.

How Recognizances of Bails are enter'd into in the King's Bench, and how in the Common Pleas.

A Recognizance of Bail in the Common Pleas is entered into specially: But a Recognizance of Bail in the King's Bench is entered into generally, viz. That if the Defendant be condemned, he shall render his Body to Prison, or pay the Condemnation-Money (without mentioning of any Sum) or else the Bail will do it for him. In the Common Pleas, if the Defendant himself be present, he is obliged in double the Sum in the Writ, and his Bail in the single Sum. But if the Defendant is not there, then his Bail must be bound in double the Sum, to render the Body of the Defendant into Prison, or pay the Condemnation.

Of the Court of Exchequer.

The Court of Exchequer is a mixed Court, and doth consist of Law and Equity. The Plea-Side is for Matters of Law, and the Exchequer-Chamber for Matters of Equity: On the Plea-Side they proceed in Latin, and in the Exchequer-Chamber by *English Bill, Answer, &c.* as in Chancery; but their Informations, *Quo Warranto, &c.* are in Latin, and are all on the Treasurer's Remembrancer's Side.

The Hundred-Court is derived out of the County-Court, and cannot prescribe to grant Replevins.

The Hundred-Court is derived out of the County-Court; and the County-Court could not before the Statute of *Marlebridge* grant Replevins without a Writ; so that an Hundred-Court cannot prescribe in it. 5 *Mod.* 254. See the Pleadings in it. 248.

For County-Courts.

11 H. 7. cap. 15.

See the Statute of 11 H. 7. cap. 15. entitled, *Entring of Plaints in County-Courts, examining of Sheriffs, Execution of Precepts, viewing of Estreats, and gathering of them, in every which Particular Directions are given by the said Statute, and the Punishment directed thereby against the Offenders.*

The County-Court for *Sussex* to be kept one time at *Chichester*, and the next at *Lewes*.

19 H. 7. cap. 24.

By an Act made 19 H. 7. cap. 24. it is enacted, That the Shire-Court for the County of *Sussex* shall be holden and kept one time at *Chichester*, and the next time at the Borough of *Lewes*, and that every Court holden to the contrary hereof, and every Thing done therein shall be void.

How Matrimonial and Testamentary Causes came to be determined by the Ecclesiastical Courts.

Although all Matrimonial Causes have of long Time been determinable in the Ecclesiastical Court, and are now properly within their Jurisdiction, yet *ab initio* it was not so; for as well Causes of Matrimony, as Causes Testamentary, were Civil Causes, and did appertain to the Civil Magistrate, until Christian Emperors and Kings granted or allowed to the Clergy the Jurisdiction of those Causes. *Dav. Rep.* 51. b.

Croft, See Croft.

Custom.

See { Prescription.
Usages.

A Custom is a Law or Right not written; which being established by long Practice and Use, and the Consent of our Ancestors, hath been and is daily put into Practice. See Davis Rep. a.

Custom, what.

A Custom alledged *in fieri*, not *in facto*, is naught. Raym. 4.

If a Custom be alledged *in fieri*, and not *in facto*, it is naught.

Unity of Possession destroys a Custom. *Idem* 192.

Unity of Possession destroys it.

When a Duty is raised by Custom, a Distress for that Duty must be maintained by the like Custom. *Idem* 204.

Distress for a Duty must be maintained by Custom.

It is the Custom of London, where one that is educated in one Trade may use another. 1 Saund. 312.

Custom of London for using of any Trade.

Any Custom which may be intended to have had a lawful beginning is a good Custom. 11 H. 7. 14. Mich. 24 Car. B. R. else not; for Continuance of Time cannot make *malum in se* to be good.

If a Custom had a lawful Beginning, it is good.

Any thing which may be good and lawful to be done, which had its Original from the Consent and Agreement made betwixt Parties, may be good and warrantable to be done by virtue of a Custom, Mich. 23 Car. B. R. Although some particular Persons may be prejudiced thereby; for *consensus tollit errorem*.

A Custom that begun by Consent, is good.

The Customs of the Universities are confirmed by Act of Parliament. Pasch. 23 Car. B. R.

Customs of the Universities confirmed by Act of Parliament.

If there be a Question in this Court, Whether there be such Customs or not in the City of London, the Trial must be by Certificate from the Mouth of the Recorder. Pasch. 24 Car. B. R. The Recorder being intended to have Conusance of them, as being *of civitatis*.

How Custom or no Custom in London, to be tried by B. R.

Custom

Custom to take Apprentices lies in the *Solet* only.

Custom to take Apprentices lies in the *Solet* only without the *Debet*. 1 *Lev.* 12.

Custom of *London* to bring all Wares sold by Weight to the King's Beam, good.

The Custom of *London* to bring all Wares usually sold by Weight to the King's Beam, and divers such Customs, good. *Idem* 15, 16.

Concerning Ecclesiastical Matters triable at Common Law.

A Custom touching Ecclesiastical Matters triable at the Common Law, and not in the Ecclesiastical Courts. 2 *Lev.* 187.

Custom for all the Fee-Tenants of a Corporation, good; for all the Inhabitants, ill.

A Custom for all Fee-Tenants and Inhabitants of a Corporation, good; for all the Inhabitants, ill. *Idem* 253.

Tho' several Persons prescribe a Custom for the same thing, such Custom may be well commenced.

Where one thing may be claimed by several Persons by Custom and Prescription, and the Custom and Prescription might be well commenced. 1 *Saund.* 351, 352, 353.

By the Custom of Merchants, if two Persons be found in Arrear upon an Account, both of them are liable to pay the whole Sum.

If two Persons be found in Arrear upon an Account grounded upon the Custom of Merchants, any one of them may be charged to pay the whole Sum that both of them were found to be in Arrear upon the Account; and this is by the Custom of Merchants. 26 *Jan.* 1650. *B. S. viz.* Two

Persons that drive a joint Trade betwixt them; for it is intended they are each of them answerable in way of Trade for what his Partner shall do.

Where the Merchant, and where the Factor is Debtor by the Custom of Merchants.

By the Custom of Merchants, where the Merchant orders his Factor to buy Goods of a particular Person, there the Merchant is Debtor, and not the Factor; but where the Merchant orders his Factor to buy Goods for him, and doth not say of

whom, and the Factor doth buy as Factor to the Merchant several Goods of several Persons, which Goods come to the Use of the Merchant, here the Factor only is Debtor, and not the Merchant; this Custom was found by a Jury of Merchants, and afterwards by another Jury of the Merchants in *London* returned by Rule of Court. *Inter Pmberton and Bunkley, & alios, tempore Car.* 2.

It must be *ex certa causa rationabili*.

Consuetudo est ex certa causa rationabili, and if it be not grounded upon such a reasonable Cause it is void. *Cro. El.* 725. pl. 58.

A Custom to have *solam & separalem pasturam*, is good; and why.

A Custom to have *solam & separalem pasturam* hath been formerly doubted, whether good or not; but it is now held to be good, because the Lord of the Soil might have some Recompence for it. 3 *Mod.* 291.

A good Custom ought to have four inseparable Incidents:

1. A reasonable Commencement.
2. It ought to be certain, and not ambiguous.
3. It ought to have Continuance without Interruption.
4. It ought to submit to the King's Prerogative, and not to exalt it self against it. *Davis Rep.* 32. a.

There

There are two Pillars of Custom; one the common Usage; the other, that it be Time out of Mind. 4 Leon. Case 384.

A Custom ought to be positively alledged by Usage in Fact. Lutw. 1319.

A Custom alledged to be in a particular Parcel of Land, and not in any Manor, Vill, Parish or County, is naught. Lutw. 1319.

A Custom alledged to be in a Parish, That the Occupiers of such a Close within the Parish have used to have a Way, &c. adjudged to be naught; because a Custom within a Parish cannot be well applied to a Close in a Parish. 1 Cro. 418. Lutw. 1319. But all the Inhabitants of a Parish or Vill may alledge a Custom or Usage for an Easement. 3 Mod. 294. See Title Easement.

Custom in Copyholders, and Prescription in Freeholders to have *solam & separalem pasturam*, and good. 1 Lev. 268.

Custom for all the Inhabitants to dance upon the Plaintiff's Land, *omni tempore anni*, for their Recreation; and good, because it is necessary for Inhabitants to have their Recreation. 1 Lev. 177.

A Custom for Inhabitants of a Vill to prescribe for Common, is illegal and void. Cro. El. 362. pl. 25. 363.

Custom to pay a Year's Value for a Fine for Copyhold Land, is good, tho' objected that the Value is uncertain. 3 Lev. 255.

Customs ought to be laid in the Land, and ought to be reasonable; for those which are unreasonable, are not good, nor to be allowed. For the Common Law is grounded upon Reason, and allows not unreasonable Things. 6 Rep. 60.

A Custom for a common Bakehouse in a Town, held good. 8 Rep. 125. b.

Several Customs against common Right, and the Rule of the Law, yet held good. 8 Rep. 126, 127.

A Custom, That if any Tenant of the Manor of Port-Chester devises by his Will, or aliens, or enfeoffs, or makes a Surrender of any of his Lands held of that Manor, that if the same be not presented at some Court held for the said Manor within a Year after such Alienation, or at the next Court holden after the Year, then such Alienation, &c. should be void; this was adjudged a good Custom, more especially considering that it was a Port-Town. Cro. El. 668. pl. 25. 669.

By the Custom of London, an Action on the Case doth lie against one for calling of a Woman Whore; and so is the common Practice. Now al-

The two Pillars of Custom.

A Custom ought to be positively alledged.

A Custom alledged to be in a particular Parcel of Land.

A Custom alledged to be in a Parish, not good.

Custom in Copyholders, and Prescription in Freeholders.

Custom for Inhabitants of a Parish to dance upon the Plaintiff's Land.

Custom for Inhabitants to prescribe for Common, void.

Custom to pay a Year's Value for a Fine for Copyhold Land.

Customs unreasonable, not to be allowed.

For a common Bakehouse, held good.

Customs against Common Right, and Rule of the Law, held good.

A Custom to present all Devises, Alienations, Feoffments and Surrenders, &c. at the next Court, or to be void, held a good Custom.

Case in London lies for calling a Woman Whore.

so it lieth for a Lodger, for she comes within the Custom, which reacheth to all the Inhabitants. *Quod Nota*: But she must be an Inhabitant within *London*; for by the Common Law it lies not, but only upon the Custom.

Action lies upon the Custom of *Bristol*, upon a *Concessit solvere*.

By a Custom of the City of *Bristol*, an Action that is brought against one upon a bare Promise of the Party, that he would pay the Money, or upon a *Concessit solvere*, is maintainable there; and so it is by the Custom of *London*. This may be thought reasonable there, in regard of a ready way used in bargaining and commercing one with another.

The Custom for Goods taken at Sea as Prize.

By a Custom used at Sea, the Goods in a Ship, which is taken as Prize, ought not to be taken out of the Ship, before the Ship so taken be condemned for Prize in the Court of Admiralty. For before the Ship be condemned, it appears not judicially that the Goods are Prize-Goods, tho' she be brought in as a Prize.

Customs due to the King.

What Customs are due to the King by Inheritance.

When the Petit Customs began.

The *Customs Antique*, when granted by Parliament. 3 C. 1.

his Reign, and was 162, 163.

What manner of Duties, Customs and Subsidies are, and their Original; what Customs are due to the Crown by Inheritance for Merchandize, and what are due of Common Right, and not by Benevolence, or Act of Parliament; and when the Petit and new Customs payable by Merchant-Strangers began, and how Prifage of Wines is due; see *Davis's Rep.* 8, 9, 10, &c.

The Customs, called *Customs Antique*, for Wool, Woolfels, and Leather, were granted by Parliament to King *Edward the First*, in the third Year of his Reign, and was no Duty at the Common Law. *Vaugh. Rep.* 161, 162, 163.

Custos Brevium.

Custos Brevium is the Chief Officer belonging to the Court of Common Pleas of King's Bench, whose Office is to receive and keep all the Writs, and to put them on the Files, every Return by it self; and at the End of every Term to receive of the Prothonotaries all the Records of Nisi prius, called the Postea. The Custos Brevium also makes Entry of Writs of Covenant, and the Concord upon every Fine; and makes out Exemplifications and Copies of all the Writs and Records in his Office, and of all the Fines levied. The Parts of the Fines, after they are ingrossed, are divided between the Custos Brevium and the Chirographer; whereof the Chirographer always keeps the Writ of Covenant and the Note; the Custos Brevium keeps the Concord, and the Foot of the Fine, upon which Foot the Chirographer causes the Proclamations to be indorsed when they are all proclaimed.

Custos Brevium, what.

No Clerk ought to be admitted into the Office of the *Custos Brevium*, without the Consent of the Lord Chief Justice first obtained: And those that are admitted ought to be chosen out of the best Clerks in the King's Bench Office. *Per Roll. Chief Justice, 1655.* For the Lord Chief Justice hath a Superintendent Power over all the Offices and Officers belonging to this Court, for the better Regulation of them in order to the readier Administration of Justice: And the Court has a Power to order Matters between Attorneys and their Clerks; Attorneys being Ministers of the Court.

No Clerk to be admitted into the Office of *Custos Brevium*, without the Consent of the Lord Chief Justice.

Damage

Damage Feasant.

Abolish.

Distress.

See Justification.

Plea and Pleading.

Tender.

Damage Feasant, what.

Damage Feasant is when a Stranger's Cattle are in another Man's Ground, without the lawful Authority or Licence of the Owner of the Ground, and they do there feed, tread down, and spoil the Corn, Grass, &c. in which Case the Owner of the Land may distress and impound them.

For what Horses tied to a Plough or Cart may be distressed, and for what not.

Horses in a Plough or Cart may be severed from thence and distressed for Damage Feasant, but it cannot be in the Case of a Rent-Service. *Cro. El. 8. pl. 6.*

Goods sold in a Market cannot be distressed Damage Feasant.

An Ox-hide brought into the Market and sold cannot be distressed Damage Feasant. *Cro. El. 628.*

Distress for Damage Feasant can be no where but upon the Land.

If one comes to distress Damage Feasant, and seize the Cattle, and the Owner drives them out, he cannot distress them Damage Feasant, but is put to his Action of Trespass; for the Cattle ought to be actually upon the Land Damage Feasant at the Time of the Distress. *9 Rep. 22. a.*

Amends for Trespass cannot be tendered to a Bailiff.

Where Cattle are distressed Damage Feasant, Amends cannot be tendered to a Bailiff; for he cannot deliver the Distress when once taken, neither can he demand Rent upon a Condition of Re-entry. *5 Rep. 76.*

How to plead Possession of a Term for Years.

Plaintiff demurs, because the Commencement of the Term was not set forth.

In Trespass, the Defendant pleads, That he was possess'd of *Black-Acre, pro Termino diversorum Annorum, adtunc & adhuc ventur'*; and that being so possess'd, the Plaintiff's Cattle were doing Damage, and he distrained them Damage Feasant: The Plaintiff demurs, and shews for Cause, That the Defendant did not set forth the Commencement of the Term: For regularly where a Man in pleading makes a Title to a particular Estate, he must shew the particular Time of the Commencement

Damage feasant.

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commencement of his Title, that the Plaintiff may reply to it: But per Curiam: The Plea is good upon this Difference, viz. Where the Plaintiff brings an Action for Land, or doing of Trespass upon Land, he is supposed to be in Possession: But if he will justify by Virtue of any particular Estate, he must shew the Commencement of that Estate; and then such Pleading as here will not be good. But when the Matter is collateral to the Title of the Land, and for any Thing which appears in the Declaration the Title may not come in Question, such a Justification as this will be good. In this Case, no Man can tell what the Plaintiff will reply; it is like the Case of Inducements to Actions, which do not require such Certainty as is necessary in other Cases. 2 Mod. 70, 71.

Which ought to be in pleading of a particular Estate.

Where a Plaintiff brings Trespass, he is supposed to be in Possession.

But if he will justify by Virtue of any particular Estate, he must shew the Commencement.

But where the Matter is collateral to the Title of the Land, it is like the Case of an Inducement.

How Possessionatus fuit must be pleaded.

But in *Lutw.* 1492. it was adjudged, That the Pleading of *Possessionatus fuit* was not good, it being in Bar: And this was adjudged against the Case above, of 2 Mod. 70. and *Skevil & Averies Case.* Cro. Car. 138. *Ideo quare.*

Damages.

See { Costs.
Judgments.
Trials.
Verdict.

Damages are a Recompence given by a Jury to the Plaintiff, for the wrong done to him by the Defendant. Co. Litt. 257. a.

Damages, what.

Where the Plaintiff shall have no more Costs than Damages, unless the Jury finds more than 40 s. in Actions of Trespass, and Actions upon the Case for Words. See Title Costs.

Where Plaintiff shall have no more Costs than Damages, unless the Jury find above 40 s.

Damages ought not to be given for that which is not contained in the Plaintiff's Declaration; nor for that which is immaterially alledged, or against Law; but only for that which is materially alledged, and set forth in the Declaration. *Hill.* 21 Car. B. R. & 23 Car. B. R. For the Law will

There ought to be no Damages for what is not contain'd in the Declaration, not for what is immaterially alledged or against Law.

not repair any one for such Damages due to him, as he complains not for, and in such manner as the Law directs; for the Law doth not only shew every Man what is his Right, but doth also point out the way how to recover one's Right if it be detained.

Where the Trespass is entire, there ought not to be several Damages.

shall not be said to be several Damages, and so ought not to be divided. Sir John Heydon's Case. 11 Rep. 5. 6.

In Trespass several Defendants plead severally, and are all found guilty; how Damages must be assess'd.

How where in Trespass against two, the Jury finds one guilty at one Time, and the other at another.

In Trespass against two Defendants, one appears, pleads, is found guilty, and Damages against him. Afterwards the other is found guilty: He shall be charged with the Damages taxed by the first Inquest.

made joint by his Writ and Count, and made to be at one time, cannot be severed by the Jury, if they find the Trespass to be committed all at one time. *Ibid.*

Where two Trespasses are found severally, the Damages may be several; and if an Action be brought against three, and two only are found guilty, yet the Damages may be entire.

be found Guilty, and the third is found not guilty, there the Damages may notwithstanding be entire. *Mich. 22 Car. B. R.* For the Trespass is but one joint Trespass, though the Action be brought against divers Persons; but in the former Case there are several Trespasses found, and so the Damages may be several, though the Action be a joint Action.

If two are found guilty severally, and several Damages, yet the Costs shall be jointly tax'd.

Where a Trespass for which an Action is brought is entire, and not several Trespasses, there ought not to be several Damages given against the Defendant. *Mich. 21 Car. B. R.* For the Trespass being but one, the Damages growing thereupon

shall not be said to be several Damages, and so ought not to be divided. Sir John Heydon's Case. 11 Rep. 5. 6.

In Trespass against divers Defendants, they plead Not guilty severally; the Jury finds them all guilty: The Jury must assess the Damages jointly, because it is but one entire Trespass, and so also made by the Plaintiff's Writ and Count, *Ibid.*

But in Trespass against two, the Jury finds one Guilty at one time and the other at another, there several Damages may be assessed; but if the Plaintiff himself confess that they committed the Trespass severally, there the Writ shall abate. *Ibid.*

In Trespass against two, one appears, against whom the Plaintiff declares, then he pleads, and is found guilty, and Damages against him; afterwards the other comes and pleads and is found guilty; the Defendant who pleaded last shall be charged with the Damages tax'd by the first Inquest; for the Trespass which the Plaintiff had

made joint by his Writ and Count, and made to be at one time, cannot be severed by the Jury, if they find the Trespass to be committed all at one time. *Ibid.*

Where one joint Action of Trespass is brought for two several Trespasses, and the Trespasses are found severally, the Damages may be several; for the Damages are to be according to the finding of the Jury: But if one Action of Trespass be brought against three Trespassers, and two of the Trespassers against whom the Action is brought

be found Guilty, and the third is found not guilty, there the Damages may notwithstanding be entire. *Mich. 22 Car. B. R.* For the Trespass is but one joint Trespass, though the Action be brought against divers Persons; but in the former Case there are several Trespasses found, and so the Damages may be several, though the Action be a joint Action.

If an Action of Trespass be brought against two Defendants, and one of them is found guilty by himself, and the other by himself, and Damages are severally assessed, yet the Costs shall be jointly tax'd. *Pilfold's Case. 10 Rep. 117. a.*

Damages.

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In Trespass or Assault and Battery against two, if one plead to Issue and the other demurr, yet the Damages shall be assessed intirely against both of them. 2 Saund. 26.

In Trespass against two, tho' one plead to Issue and the other demur, yet the Damages shall be entire.

In an Action in which Damages are to be recovered, the Damages are divisible. 2 Saund.

Where Damages are divisible.

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If a Declaration be in Case or Trespass, &c. *ad damnum* 20*l.* and the Jury find 20*l.* Damages, and the Master taxeth 10*l.* Cost, which makes 30*l.* and upon entring up of the Judgment it is said, *quæ quidem damna in toto se attingunt ad triginta libras*, yet here it is good enough, because the Jury have found no more Damages than the Plaintiff declared for; the other is Encrease of Costs given by the Court.

Damages and Costs amount to 30*l.* the Judgment is enter'd as of Damages only; yet well enough.

Double Damages given for one and the same Trespass, are not well given. *Mich. 22 Car. B. R.* For the Law uses to proportion the Amends or Satisfaction for the Injury done according to the Loss which the Party to whom the Injury is done, doth receive by the Injury, and the Jury ought not to alter the Law by their Verdict.

Double Damages for one Trespass, not good.

In an Affize the Jury ought to give Damages for the Value of the Land to the time of the Recovery pending the Suit, because there is no Remedy over to recover the Damages; (because there the Land it self is recovered) but in *Ejectione firme*, the Possession is only recovered; but small Damages are to be given. *Pasch. 23 Car. B. R.* For there either the Plaintiff or Lessor may bring an Action of Trespass and recover the mean Profits from the time of the Demise laid in the Declaration.

How the Jury ought to give Damages in an Affize of Land.

Upon a Demurrer to an Evidence, the Court did direct the Jury, who should have tried the Issue, if the Demurrer had not been, to find Damages for the Plaintiff, if upon arguing the Demurrer the Court should give Judgment for him. *Pasch. 23 Car. B. R.* For the Jury may consider of the

On Demurrer to Evidence the Jury was directed to find Damages for the Plaintiff if the Court should give Judgment for him.

Matter of Fact which should have been tryed, if the Evidence had not been demurred unto, notwithstanding the Demurrer, which only concerns the Matter in Law; and may find Damages accordingly.

Where Damages are found severally, the Plaintiff may relinquish Part of the Damages, and enter his Judgment for the rest. *Hill. 33 Car. B. R.* But where the Damages are entire he may do it without Leave of the Court. *Pasch. 24 Car. B. R.* and 19 Apr. 1648.

Where Damages are found severally, the Plaintiff may relinquish Part, and enter Judgment for the rest.

In

The Jury find more Damages than the Plaintiff declares for: The Plaintiff at the Day in Bank remits the Surplus and prays Judgment for the rest with Encrease of Costs, and had it; And upon a Writ of Error, tho' the Damages and Costs amounted to more than was laid in the Declaration, yet the Judgment was affirmed.

Word Damages; but the Court notwithstanding affirmed the Judgment, which see at large, *Pilford's Case*. 10 Rep. 109. b. 110.

The Judges of inferior Courts may execute Writs of Enquiry of Damages.

In some Cases greater Costs may be given than are laid in the Declaration.

In Maihem the Court may encrease Damages upon a View.

In Replevin and special Verdict, Costs and Damages shall be given as the Issue shall be found on the Determination of the Matter in Law.

If Plaintiff becomes nonsuit for want of a Replication, he shall pay Costs for false Vexation of the Defendant.

Costs for his false Vexation of him, by the Statute of 4 Jac. 3. and upon very good Reason; For it shall be intended, that if he had had good Cause of Action against the Defendant, he would not have become nonsuit, but would have gone to a Trial.

When the Defendant may give a Rule to try the Issue by *Proviso*.

had proceeded of his own Inclinations; and such Trial is said to be a Trial by *Proviso*, because in the Writ of *Distringas Juratorum* there is included this Clause, *Proviso semper quod si duo brevia tibi venerint unum tamen eorund. exequaris.*

In Trespass the Plaintiff declares *ad damnum* 40 l. the Jury find 49 l. Damages, and 20 s. for Costs; whereupon at the Day in Bank the Plaintiff remits 9 l. parcel of the 49 l. assessed by the Jury for his Damages, and prayed Judgment for the 40 l. with Encrease of Costs; and he had 9 l. *de incremento* added by the Court, which *in toto* amounted to 50 l. and had his Judgment accordingly: And upon a Writ of Error it was insisted upon for Error, that the Damages and Costs together amounted to more than the Damages alledged in the Declaration, and that *misa & custagia* were included within the Judgment, which see at large, *Pilford's Case*. 10 Rep. 109. b. 110.

A Writ of Enquiry of Damages in a Cause tried in the Marshal's Court, or any other inferior Court, may be executed by the Judges in the Court there.

Greater Costs may be given in some Cases than the Damages laid in the Declaration. *Trin. 24 Car. B. R.* For the Plaintiff's Declaration is only for the Damages due unto him, by reason of the Injury done him by the Defendant; but the Costs are given in respect of the Plaintiff's Expences in his Suit to recover the Damages, which may perchance be far more than his Damages suffered by the Defendant.

In Case of Maihem the Court may upon a View of the Fact encrease the Damages given by the Jury, if they think fit.

In a Replevin brought, and a special Verdict thereupon found, Costs and Damages shall be given on either Side, according as the Issue shall be found upon the Determination of the Matter in Law.

If an Action be brought, and the Defendant pleads, and gives a Rule for the Plaintiff to reply to his Plea, and the Plaintiff will not reply to the Defendant's Plea, but becomes nonsuit for want of a Replication, he shall pay the Defendant Vexation of him, by the Statute of 4 Jac. 3. and upon very good Reason; For it shall be intended, that if he had had good Cause of Action against the Defendant, he would not have become nonsuit, but would have gone to a Trial.

Where the Issue is entered, then after one Default made by the Plaintiff, the Defendant may give a Rule to try it by *Proviso*, and he may then make up the Record, and try it as if the Plaintiff had proceeded of his own Inclinations; and such Trial is said to be a Trial by *Proviso*, because in the Writ of *Distringas Juratorum* there is included this Clause, *Proviso semper quod si duo brevia tibi venerint unum tamen eorund. exequaris.*

When a Judgment is given by Default in an Action of Debt, then the Court doth assess the Damages, and not the Jury. *Mich. 1649. B. S.* For there is no Issue tried by the Jury, and so they cannot assess Damages; and yet it is not Reason but that the Plaintiff should have his Damages which are in effect confessed by the Defendant, by suffering a Judgment by Default to be against him.

If Judgment be given by Default in an Action of Debt, the Court assesses the Damages.

In Debt upon a Bill obligatory, if the Plaintiff had Judgment by Default or Confession, the Course of B. R. and C. B. is to tax the Damages *occasione detentionis debiti*, as well as the Costs of Suit, if the Plaintiff assent; but if the Plaintiff will not assent, he shall have a Writ of Enquiry of Damages *occasione detentionis debiti ill'*, if he be minded; but it is in the Election of the Plaintiff and not of the Defendant, and the Interest may be included in the Damages. 2 *Saund.*

How Damages to be taxed when the Plaintiff has Judgment by Default or Confession.

If an Action of Trespass be brought against divers Persons, and some of them plead to Issue, and others do not, and the Issue is found for the Plaintiff, the Jury shall assess Damages as well upon the Issue, as upon the Enquiry of Damages. *Mich. 1649. B. S.* For the Trespass is found and confessed, and that the Plaintiff was dampnified so much by reason thereof.

In Trespass against several, if some plead to Issue, and others not, if it be found for the Plaintiff, the Jury shall assess Damages both upon the Issue and Writ of Enquiry.

Where the Jury that tries the Issue ought to enquire of Damages upon the Demurrer also. 2 *Saund.*

Where the Jury are to enquire of Damages upon a Demurrer.

Where a Judgment is entred up only for Damages, and it is not expressed to be *tam pro damnis quam pro misis & custagiis*, this is erroneous; for it doth not appear by the Record for what the Damages are assessed, as it ought to do. *Hilk. 1649. 31 Jan. B. S.* For Records ought to be certain, and not ambiguous, whereby either the Court may be inveigled or any Party prejudiced thereby.

Where a Judgment is entred for Damages only, it is erroneous.

All Costs in Replevin and Avowry are given *ex assensu partium*, that is, by the Consent of the Plaintiff, if they are taxed for the Plaintiff, and of the Avowant, if they were taxed for the Avowant. By *Woodward Clerk, Hill. 1649. 4 Feb. B. S. Qu. Ante Title Avowry.*

Costs in Replevin and Avowry are given by the Consent of the Parties.

Also in all other Actions where Costs are given they are given *ex assensu* of the Plaintiff.

In all other Actions they are given by Consent of the Plaintiff.

Where Costs are taxed after a Verdict, it is said in the Judgment *ex assensu quer. de incremento adjudicat.* Where it is not after a Verdict it is only said *ex assensu suo adjudicat.*

How the Judgment is when Costs are taxed after a Verdict, and when not.

When one sues *in forma pauperis*, if the Cause goes against him, yet he shall pay no Costs, if he were admitted to sue *in forma pauperis*, before the Suit began; for it shall be intended by his Admission to

Where a Man admitted to sue *in forma pauperis* shall pay no Costs, and where he shall.

sue *in forma pauperis* before his Suit commenced; that he was not able to pay Costs; but if he were admitted to sue *in forma pauperis*, *pendente lite*, that is, whilst the Suit depended, he shall pay Costs; for it may be he was able to pay Costs when he began his Suit, and Costs have relation to the whole Suit. See the Statute of 23 H. 8. cap. 15. By Rolle Chief Justice, who said, It had been so (anciently) held and ruled, 16 Nov. 1650. B. S. But *Quere* what Costs, whether the Costs of the whole Suit, or only with relation from the time he commenced his Suit, to the Time he was admitted to sue *in forma pauperis*.

Where the Court may tax Damages in a Writ of Dower.

In a Writ of Dower, if the Plaintiff recover, and yet doth not desire a Writ of Enquiry of Damages to recover the Damages, the Court may tax the Damages, 5 Feb. 1650. B. S. To avoid Charges, and this is in favour of Dower.

Where the Court may encrease the Damages that are found by the Jury.

The Court may encrease the Damages which are found by the Jury, upon a Writ of Enquiry of Damages, in an Action of Assault, Battery and Wounding, if they see Cause upon the View of the Party that was beaten and wounded. *Trim.* 1651. B. S. This was done in the Case of *Davis* Plaintiff, and the Lord *Foliot* Defendant; for of such a Matter of Fact the Court is as well able to judge as a Jury, and shall be judged to be as indifferent betwixt the Parties.

The Court will not compe, the Party that is nonsuit to pay his Costs, but if he begin his Suit afresh, they will stay his Proceedings till he has paid them.

The Court will not compel the Party that is nonsuit in a Cause, to pay his Costs upon the nonsuit; but if the Party will not pay them when they are taxed, and he commenceth his Suit again, this Court will stay his Proceedings in his Suit until he have paid them. *Pasch.* 1652. B. S. For if they should suffer it, this would encourage Men to be vexatious.

In like Manner, if the Plaintiff be nonsuit in C. B. and bring his Action again in B. R.

So likewise where a Plaintiff is nonsuited in the Common Pleas, and brings his Action again in this Court, this Court will stay the Proceedings here until the Costs in the Common Pleas are paid; and the Common Pleas will do the same for this Court.

After Judgment given the Court cannot make a Rule for Payment of Costs expended in the Prosecution.

After Judgment is given in a Cause depending in this Court, this Court cannot make a Rule for the Payment of the Costs which were expended in prosecuting the Suit. By Rolle Chief Justice, 1655. B. S. For after Judgment the Parties are out of Court, for the Cause is determined.

Damages wrong cast up in the Plea, good after Verdict.

Damages at the end of a Plea or Count miscast to more than the Particulars amount, good after Verdict, if the Jury give no more than the Particulars amount to. 1 *Lew.* 58.

Tho' the Declaration concludes *petit judicium & debitum*, omitting *dampna*, yet the Court will give Damages.

Declaration concludes *petit judicium & debitum*, omitting *dampna*; the Court gives Damages also as incident, and included in the *petit judicium*, but it is ill upon a special Demurrer. *Id.* 222, 273.

Allen

Damages.

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When Damages shall be in a Prohibition. 3 *Lew.* 352.

Double for suing in the Admiralty against the Statute. *Idem* 351.

For Damages in *Warrantia Chartæ*. *Id.* 322.

Where the Prayer of Damages is only matter of Form. 1 *Saund.* 98.

Where two Breaches are assigned, and part of the Matter of one Breach is comprehended under the other Breach, and Damages are assessed entirely, Judgment shall be stay'd. *Idem* 154, 155.

In an Action upon the Case, where Damages are to be recovered, the Damages are divisible, and may be proportioned according to the Wrong. *Id.* 268.

Where the Plaintiff declared for procuring the Departure of his Apprentice, and for losing of his Service *per totum residuum Terminum* of his Apprenticeship, and the Jury had assessed Damages generally, Judgment was arrested, for that it appeared that the said Term was not expired. 2 *Saund.* 170, 171.

Where the Jury find the Issue for the Plaintiff, they ought to assess the Damages, altho' the Plaintiff had alledged them in his Declaration. *Ibid.*

And when Damages are assessed generally, it shall be intended that they were assessed according to the Declaration. *Ibid.*

That Damages ought to be taxed for the Time passed before the exhibiting the Bill or Writ only, and not until the Verdict rendred. *Ibid.*

In Detinue the Omission of the Value of the Charters in the Verdict may be supplied by a Writ of Enquiry. *Raym.* 124.

In an Attachment on a Prohibition, where Damages are given for the Plaintiff, there he ought to lay a Visne where the Suit in the Ecclesiastical Court was, otherwise the want of a Visne hurts not. *Id.* 387, 388.

At the Common Law before the Statute of *Gloucester*, 6 E. 1. cap. 1. a Man should not recover Damages in any real Action, but in mixt and personal Actions he should; but now in all Cases where a Man recovers Damages he recovers his Costs also; and also in all Cases where a Man either before or by the same Statute did not recover Damages; so after that Statute where another Statute in a new Case shall give Damages either single

When Damages shall be in a Prohibition.

Where double for suing in the Admiralty.

In *Warrantia Chartæ*.

Where the Prayer of Damages is only Matter of Form.

If Damages are assessed entirely, where two Breaches are assigned, and Part of the one is comprehended under the other, Judgment shall be stayed.

Where Damages are divisible in an Action on the Case.

Plaintiff declared for procuring the Departure of his Apprentice, by which he lost his Service all the Residue of his Term, and the Jury assessed Damages generally, and Judgment arrested because the Term was not expired.

If the Jury find for the Plaintiff, they must assess the Damages, tho' they are laid in the Declaration.

And when Damages are generally assessed, it shall be intended to be according to the Declaration.

For what Time Damages ought to be taxed.

In Detinue Omission of the Value of Charters may be supply'd by Writ of Inquiry.

In an Attachment on a Prohibition, if Damages are given for the Plaintiff, where he ought to lay a Visne.

Where Damages should be recovered before the Statute of *Gloucester*. And where Damages and Costs shall be recovered by that and other subsequent Statutes.

single, double or treble, there the Plaintiff shall not recover Costs, because it is an Act of Creation which gives the Plaintiff a Recompence where he had none before; but it is otherwise where it is an additional Act, viz. by adding a greater Recompence and Satisfaction than was given before this Act. *Pilford's Case*, 10 Rep. 110. a.

In an Action for Words spoken at three several Times, the Jury may give them Damages for the speaking them at any one of thole Times.

In what real Actions, Damages and Costs shall be recovered:
6 E. 1. rap. 1.

From what Time he shall recover his Damages.

How Damages and Costs shall be recovered in real Actions.

recover them pending the Writ, and for Costs he shall recover them for the Expences pending the Writ. *Pilfold's Case*, 10 Rep. 117. a. But I conceive that he cannot recover them any other way than by a Writ of Enquiry grounded upon this Judgment.

How Damages must be levied upon a *Noctanter*.

Where in Battery, Imprisonment, &c. against three, who are found severally guilty, and Damages severally; how the Judgment shall be.

tiff could have but one of them, and he to make his Election *de melioribus dampnis*. *Rodney and Strode's Case*. 3 Lev. 324. See Title Costs.

Where Trover lies for the same Cattle after a Verdict and Judgment given in an Action of Trespass for them, and only second Damages found, and why.

The Jury must not find more Damages than is laid in the Declaration.

Declaration: If they do, it is Error. For the Law presumes, That the Plaintiff doth best know how much he is damaged by the Defendant; and

By Glyn Chief Justice in a Trial at the Bar, Hill. 1656. B. S. between *Wood* and *Jonston*, If an Action be brought for Words spoken at three several Times, the Jury may give Damages for the speaking of them at one of those Times; for the Plaintiff may have three several Actions for them.

Damages shall be awarded in all Cases where a Man recovers in an Assize of *Novel Disseisin*, an Assize of *Mortd'ancestor*, and in Writs of *Cofinage*, *Aiel* and *Besaiel*; he shall also with his Damages recover his Costs. But in none of these Actions he shall not recover Damages, but from the Death of his next immediate Ancestor. 2 Inst. 288.

In real Actions the Plaintiff doth not count *ad dampnum* because it is uncertain to what Sum the Damages do amount unto, and therefore he shall

recover them pending the Writ, and for Costs he shall recover them for the Expences pending the Writ. *Pilfold's Case*, 10 Rep. 117. a. But I conceive that he cannot recover them any other way than by a Writ of Enquiry grounded upon this Judgment.

Where Damages are found upon a *Noctanter* Writ, they must be levied by *Distingas* out of the Crown-Office. 5 W. & M. B. R.

In Battery, Imprisonment, and taking of Goods, against three Persons. One commits the Battery, another the Imprisonment, and the third takes the Goods, all at one Time. All are guilty of the Whole, and shall be charged with all the Damages: And if several Damages had been given, the Plaintiff

could have but one of them, and he to make his Election *de melioribus dampnis*. *Rodney and Strode's Case*. 3 Lev. 324. See Title Costs.

Where in an Action of Trespass only Twopence Damages were given for taking and driving away of ten Sheep, the Plaintiff afterwards brings Trover for them, and this Verdict in Trespass was pleaded in Bar to him, and adjudged, by three Judges against one, that Trover well lies; for the Court shall intend that the second was given only for the taking and driving of them, nor for the Value of them. *Cro. Car.* 35. pl. 9. 36.

In an Action upon the Case, the Jury may find less Damages than the Plaintiff lays in his Declaration, but they cannot find more than is laid in the Declaration: If they do, it is Error. For the Law presumes, That the Plaintiff doth best know how much he is damaged by the Defendant; and

and therefore, though it may be the Plaintiff will pretend he is more damnified than in truth he is, as is often done; yet it shall not be presumed, that the Plaintiff will say he is less damnified by the Defendant than he is: And therefore for the Jury to give more Damages than the Plaintiff declares upon, would be unreasonable. But the Plaintiff may release Part of his Damages upon his entring up of his Judgment, as it was done in *Pilfold's Case*, 10 Rep. 115, 116. And that will set all right again.

In Debt upon a Bond *ad dampnum* 10 l. the Jury found *dampnum* to 7 l. and the Costs *de incremento* came to 13 l. so it was 3 l. more than he laid in his Declaration, yet the Court may increase them. *Cro. El. 544. pl. 13. Cro. Jac. 297. pl. 3. 67. 70.*

The Court may give more Damage than in the Declaration, though the Jury cannot.

So it is where in Case the Damages are laid to 10 l. and the Jury give 10 l. Damages, and 20 s. for Costs, and good; though they are all Damages. *Cro. Jac. 69. pl. 11.*

Of the Import of the Words *Dampna & Misa*. 10 Rep. 16. b.

Dampna & Misa, quid.

In what Cases double Damages, single Damages, treble Damages and Costs shall be given. 10 Rep. 115. b. 118. a.

Where double, treble, &c. Damages and Costs.

In Trespass upon 8 H. 6. cap. 9. Of forcible Entry, the Damages found by the Jury, and Costs *de incremento* were all trebled. 2 Leon. Case 70. Because they were given by the Common Law. 2 Inst. 289.

Costs and Damages trebled in Trespass upon the Statute of 8 H. 6. cap. 9.

In an Avowry for Rent, Part is found for the Plaintiff, and Damages and Costs, and Part for the Avowant, the finding of the Damages and Costs for the Plaintiff is void; for when Part is found for the Avowant, he shall have a Return with Damages and Costs. *Cro. Jac. 473. pl. 3.* So for Damage Feasant. But whether or no for an Amercement in a Leet; two Judges that he shall, one that he shall not. See *Cro. Car. 532. pl. 533.* and 7 H. 8. cap. 4. and 21 H. 8. cap. 19. See in Title Costs.

In an Avowry for Rent, Part found for the Plaintiff, Part for the Avowant, he shall have Damages, Costs and Return.

The Omission of finding of Damages in a Verdict, shall not be supplied by a Writ of Enquiry of Damages. 10 Rep. 118. b. 119. a.

But whether for an Amercement in a Leet. 7 H. 8. cap. 4. 21 H. 8. cap. 19.

So in all Cases where an Attaint lies; but where no Attaint lies, it may be supplied by a Writ of Enquiry. 10 Rep. 119. a.

Omission of Damages after Verdict not supplied by Writ of Enquiry.

But where no Attaint lies, it may.

Where Damages are entirely assessed, and Damages ought not to be given for some Part; no Judgment can be given. 10 Rep. from 130. to 133.

Damages entire, and Part, is not actionable.

Upon a Judgment given upon a Demurrer, upon an Action of the Case, the Court is not to assess the Damages, but the Jury is to do it: For the Court gives the Judgment upon the Matter in Law; but the Damages are to be given upon Consideration of the Matter of

The Jury are to assess the Damages upon a Judgment in Case upon a Demurrer.

Fact, which is proper only for the Jury to enquire of, and is left to them to assess upon a Writ of Enquiry of Damages.

Where an Action is brought for two several Causes:

One is actionable, and the other not.

Where an Action is brought for two several Causes of Action, one of which Causes is not actionable, and entire Damages are given upon a Verdict: Here the whole Verdict is void; because the Jury have given Damages, as well for what is not actionable, as for what is: But if the Damages had been sever'd, then the Plaintiff might have remitted the Damages for that Part which was not actionable, and taken his Damages and Costs for that Part which was.

Damages given in Trover for a nonsensical Demand, and good.

Where, and where not.

Plaintiff for such Things, and some of them are nonsensical, there it is naught. *Show. Rep. 144.*

Where Costs are taxed, and by whom, upon Judgments in Debt.

And also in Actions upon the Case.

and to tax them: But the Master afterwards taxeth the Costs *de incremento ad requisitionem* of the Plaintiff.

An inferior Court may encrease Damages *super Visum Vulneris* as well as a superior Court.

Damages encreased *super visum Maihemii*.

Though but in a common Battery, and no Maihem endors'd on the *Poslea*.

Where the Avowant shall have his Costs and Damages.

21 D. 8. c. 19. Sect. 3.

The Court gives Costs upon a *Nil dicit* in Debt.

Where an Action is brought for two several Causes of Action, one of which Causes is not actionable, and entire Damages are given upon a Verdict: Here the whole Verdict is void; because the Jury have given Damages, as well for what is

not actionable, as for what is: But if the Damages had been sever'd, then the Plaintiff might have remitted the Damages for that Part which was not actionable, and taken his Damages and Costs for that Part which was.

In Trover the Jury find for the Plaintiff generally, and some Part of his Demand is Nonsense, and entire Damages are given, and yet good; for the Damages shall be intended to be given for what is sensible; but if the Jury find particularly for the

Plaintiff for such Things, and some of them are nonsensical, there it is naught. *Show. Rep. 144.*

Where a Debt is sued for, it appears certainly to the Court what it is: And if the Plaintiff recovers, the Jury do assess some small Damages, commonly 12 d. and the Master taxeth the Costs, which is added to the 12 d. and called Damages:

But in Actions upon the Case, where Damages are uncertain, there it is left to the Jury to enquire of, and to tax them: But the Master afterwards taxeth the Costs *de incremento ad requisitionem* of the Plaintiff.

An inferior Court may encrease Damages *super Visum Vulneris*, as well as a superior Court; because the Law is the same in one Court, as it is in the other. *Ridge & Pitt. Pasch. 33. Car. 2. Rot. 561. B. R.*

Damages were encreased by the Court from 40 l. to 100 l. upon the Sight of the Maihem. 1 Leon. 139. pl. 191. Though the Action was only a general Action of Battery, and no Indorsement of Maihem upon the *Poslea*, but yet the Court upon sight of the Wound; and the Oath of the Surgeon, that it was a Maihem, encreas'd Damages. *Latch 223, 224.*

He that makes Avowry, Conusance or Justification for Rent or Damage Feasant, shall have his Costs and Damages by the Statute of 21 H. 8. c. 19. sect. 3.

If a Judgment be given by *Nil dicit* in an Action of Debt, brought in this Court, or the Common Pleas; such Court, and not the Jury, will give Costs and Damages: And so it is used to be done in inferior Courts.

Damages.

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The Plaintiffs in real Actions do not alledge any Damages in their Counts, because they are to recover Damages pending the Writ; but in personal Actions they count *ad dampnum*, because they recover Damages only for the Tort committed before the Writ brought. *Pilfold's Case*, 10 Rep. 111. a. And where they recover no Damages, they recover no Costs.

No other Costs or Damages shall be given upon a Recovery, in an Action brought upon the Statute of 2 Ed. 6. for not setting forth of Tithes, than the Damages which are expressed in the Statute, which are treble Damages; unless the single Value found by the Jury shall not exceed the Sum of twenty Nobles, and then he shall have Judgment for his Costs. Per Statute 8 & 9 W. cap. 10.

Where Damages shall be given in an Account, and where not. *Cro. Eliz.* 84.

Upon a Writ of Error in a *Quare Impedit*, where the Value of the Living was found to be 80 l. and it being above a Year before Judgment was affirmed, the Court ordered that the Defendant in the Errors should have 80 l. besides Costs, *occasione dilationis executionis*. *Cro. Car.* 145. pl. 24. *Cro. Car.* 175.

Note, Mr. *Livesay* when Secondary of the King's Bench, used to allow in taxing of the Damages and Costs after the Rate of six Pounds per Cent. *pro dilatione executionis*.

When Damages, and how, are recovered in real Actions.

And when in personal Actions.

Where are no Damages, there are no Costs.

Where Costs are to be given upon the Statute of 2 Ed. 6. for not setting out of Tithes, and where not.

8 & 9 W. cap. 10.

Where Damages shall be given in an Action of Account.

How Damages and Costs shall be upon a Judgment affirmed in a *Quare Impedit*.

How they used to be formerly in B. R.

Day.

Day,

See Day and Day of the Date.

Dies { Naturalis.
Artificialis.

Dierum alii sunt Naturales alii Artificiales. Dies Naturalis constat de 24 horis, & continet diem solarem & noctem, & est spatium in quo sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies Artificialis sive Solaris incipit in ortu Solis & desinit in occasu. Co. Litt. 135. a.

Condition to pay Money, 31 Septemb.

The Jury finding the Money not paid, is good.

The very Day not necessary in an Indictment of Burglary.

What Feasts and Days the Court will take Notice of.

And of the Calendar.

Where the Day shall be taken inclusive, and where exclusive.

A Bond dated in May to pay the 20th of May following, adjudged to be payable the same May.

was the Question; and adjudged, that it should be to the 20th of the same Month. Cro. Jac. 646. pl. 11. 647. I think it was a hard Judgment. See Cro. Jac. 677. pl. 14. the same Case upon the Statute of Usury.

A Condition of a Bond to pay upon the 31st of September: The Defendant pleads Payment accordingly, and found for the Plaintiff, and moved, that it was a void Verdict, *sed non allocatur*; for there being no such Day, and the Jury finding that the Money was not paid upon that Day, nor any Time before, they do in effect find that it was never paid. Cro. Car. 78. pl. 9.

The very Day of the Fact is not absolutely necessary in an Indictment of Burglary. 2 Inst. 318, 319.

The Court will take notice of moveable and immoveable Feasts, and of the Calendar: And if a Writ of Enquiry be executed after the Return, or upon a Sunday, the Court will so judicially take notice of it, as to set it aside. 3 Anna, B. R.

Where and in what Cases the Day shall be taken inclusive, and where exclusive. Lutw. 1591, 1594. See also the next Paragraph.

A Man in May becomes bound to pay a Sum of Money the 20th of the next May ensuing the Date of the Bond; and whether it should be the same Month of May, or the May in the Year following

Day, and Day of the Date,

See { Delivery.
Obligation.

The Day of the Delivery of a Lease shall be taken to be inclusive, and the same Day is Parcel of the Demise: So it is if it be limited to commence a *Confectione*: But if it be *Habend' a Die Confectionis*, or a *Die Datus*, there the Day it self is excluded. 5 Rep. 1. a. b. But where it is from the Date, it is good. Cro. Jac. 135. pl. 10. or from henceforth. Cro. Jac. 258. pl. 18.

Where the Day is inclusive, and where exclusive.

If in the Date of a Deed the Year of the Lord is right, though the Year of the King is mistaken, yet it shall not hurt it. Cra. Jac. 261. pl. 22.

If the Year of the Lord be right, though the Year of the King be wrong, yet it is good.

A Letter of Attorney to make Livery recites the Feoffment to bear Date the 10th of September, whereas it was dated the 11th of September, and Livery was made accordingly; and held to be void. Cro. Eliz. 603. pl. 17.

A Letter of Attorney to make Livery recites the Feoffment, and mistakes the Date, the Livery is void.

If a Lease be dated the 20th of May, *Habend.* for twenty Years from the Date, or from the Day of the Date, it shall begin the 21st of May: So if the Lease bears Date the 20th of May, to hold from the making thereof, or from henceforth, it shall begin the Day on which it was delivered. Co. Litt. 46. b. 5 Rep. 1. a.

When Leases and Deeds to commence.

Trespas was laid the first of June: The Defendant pleads a Release until the 30th of May, (which was the Day of the Date) *absque hoc quod causa actionis accrevit post Confectionem scripti*: This is naught; because the *Dies Datus* excludes the Day of the Date: And the Traverse ought to be, *absque hoc* that he was guilty after the 29th of May, which is the Day next before the Day of the Date. Pasch. 5 W. & M. B. R.

In Trespas a Release pleaded until the Date.

How the Traverse must be.

Where there is none, or an impossible Date, the Plaintiff may count of any Date: But if the Count be upon a Bond, dated 1 Decembris, and upon *Non est factum* pleaded, the Plaintiff gives in

How to count upon a Bond, where there is none, or an impossible Date.

Evidence a Bond dated 1 *Januarii*, the Jury must find a Verdict for the Defendant; because this is not the Bond declared upon.

How to declare upon a Bond dated at a Place beyond Sea.

How to declare upon a Bond dated at a Place beyond Sea. See Title *Obligation*, and *Cro. Jac.* 76. pl. 5.

How to declare upon a Deed, with a *primo Deliberatum* such a Day.

Debt upon a Bond, and declares, That the Defendant 20 *Maii*, 34 *Car.* 2. by his Bond dated 10 *Octobris*, *sed primo Deliberat* 20 *Maii*, became bound, and upon a Demurrer. *Cur.* Where the Plaintiff declares upon one Date, he cannot afterwards reply, That it was *primo deliberat* at another Day; because that is a Departure; for, *prima facie*, every Deed is sup-

Where a Departure.

posed to be made the Day it bears Date: But where the Date is mistaken, the Party may declare, That by Deed, bearing Date (such a Day) but *primo deliberat* such a Day, the Party became bound. 3 *Lev.* 348. See Title *Declaration*.

Though the Party is estopped to plead the Delivery before the Date, the Jury are not.

The Obligee cannot in pleading alledge the Delivery before the Date; because he is estopped to do it: But the Jurors are not estopped to do it, unless the Estoppel or Admittance be in the same Record where the Issue is joined. 2 *Rep.* 4. b.

False Date to a Bond doth not hurt it.

If a Man brings Debt, and counts that the Defendant, 4 *Aprilis*, 24 *Car.* 2. made a Bond bearing Date the same Day and Year: And the Defendant pleads *Non est factum*; and it is found that the Bond was delivered at another Day, either before or after the Day he had counted upon: Yet the Plaintiff shall have Judgment; because the Date is not material, and the Defendant cannot be twice charged. *Goddard's Case*, 2 *Rep.* 5. a.

Though found to be delivered at another Day, yet the Plaintiff shall have Judgment.

The Date of the Deed is not of the Substance of the Deed; for it is good, though it have a false or impossible Date, or wants Date.

The Date of the Deed is not of the Substance of the Deed; for if it wants Date, or hath a false or impossible Date, it is a good Deed. 2 *Rep.* 5. a.

Death.

Amendment.
See { Lease, Lessor, Lessee.
Scire facias.

SEE the Statute of 18 Car. 2. cap. 18. That the Death of either Party between the Verdict and Judgment shall not be assigned for Error, so as Judgment be entred within two Terms after the Verdict.

Death of either Party between Verdict and Judgment, no Error.
18 Car. 2. cap. 8. Perpetual by 1 Jac. 2. c. 17.

See the Statute of 19 Car. 2. cap. 6. That Absence of the Tenant for Life for seven Years shall be accounted as dead, in Title Lease, Lessor and Lessee.

Absence of Tenant for Life for seven Years accounted as dead.

19 Car. 2. cap. 6.

It was agreed by the Court, That the Death of one Coparcener or one Joint-Tenant shall abate the Writ in a real Action. Cro. Car. 574. pl. 16.

Death of one of the Parties in a real Action shall abate the Writ.

By the Act of 8 & 9 W. cap. 10. sect. 7. it is enacted, That if there be two or more, Plaintiffs or Defendants, and one or more of them shall die, if the Cause of such Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Writ or Action shall not be thereby abated, but such Death being suggested upon the Record, the Action shall proceed at the Suit of such surviving Plaintiff or Plaintiffs against such surviving Defendant or Defendants. To make this Clause practical, I do here give an Instance in an Action of Trespass by Original. Mid. ss. A. B. nuper de C. in Com. M. Yeoman, attach. fuit ad respondend. D. E. & F. G. de placito quare præd. A. B. vi & armis, &c. bona & catalla ipsorum D. E. & F. G. ad Valentiam viginti librarum apud S. nuper invent. cepit & asport. & alia enormia eisdem D. E. & F. G. intulit ad grave dampnum ipsorum D. E. & F. G. & contra Domine Regine nunc, &c. Et unde idem, D. E. per A. R. attorn. suum dicit quod præd. F. G. post emanationem brevis præd. ac postquam præd. A. B. attach. fuit obiit & hoc idem A. B. bene concedit & idem D. E. queritur quod præd. A. 20 die M. Anno Regni,

Where one of the Plaintiffs or one of the Defendants dies pending the Suit, how to proceed.
8 & 9 W. 3. cap. 10. Sect. 7.

To make this Clause practical.

A Declaration upon it.

The Suggestion of the Death.

&c. 10. apud S. præd. vi & armis, &c. bona & catalla, videlicet (here put in

in the Goods) *ipforum D. E. & F. G. ad Valentiam 20l. ibidem nuper invent. cepit & asportavit & alia enormia, &c. ad grave dampnum, &c. & contra pacem, &c. unde idem D. E. dicit quod ipse deteriorat. est & dampnum habet ad Valentiam, &c.*

An Act for producing
to the Court of Chan-
cery Minors, married
Women, and other con-
cealed Persons.
6 Annæ Reg.

By an Act made 6 *Annæ Reginae*, it is enacted,
That any Person who hath any Claim to any Re-
mainder, Reversion or Expectancy in or to any
Estate after the Death of any Person within Age,
married Woman, or any other Person, upon an
Affidavit in Chancery by the Person so claiming,
of his Title, and that he hath Cause to believe that such Minor, mar-
ried Woman, or other Person is dead, and his or her Death is con-
cealed, may once a Year, if the Person grieved shall think fit, move
the Lord Chancellor, Keeper or Commissioners of the Great Seal, to
order such Guardian, Trustee, Husband or other Person, concealing
or suspected to conceal such Person, at such Time and Place as the
Court shall direct, on personal or other due Service of such Order, to
produce and shew the Person and Persons, not exceeding two, as shall in
such Order be named by the Party prosecuting such Order; and if such
Guardian, Trustee, Husband, or other Person, shall refuse or neglect
to produce or shew such Infant, married Woman, or other Person, on
whose Life any such Estate depends, as the Order directs; then the
Court of Chancery is to order such Minor, married Woman, or other
Person concealed to be brought into Court, or Commissioners to be
appointed by the Court at such Time and Place as the Court shall di-
rect, two of which Commissioners shall be named by the Party prose-
cuting such Order at his Costs and Charges; and in Case there shall
be a Refusal or Neglect to produce such Minor, or married Woman, or
other concealed Person in the Court of Chancery, or before such Com-
missioners, whereof Return shall be made by such Commissioners, and

Where the Person shall
be taken to be dead.

the Return to be filed in the Petty-Bag Office: Then
in either of these Cases the Minor, married Wo-
man, or other concealed Person shall be taken to
be dead, and the Person claiming any Title in such
Remainder or Reversion, may enter upon such
Lands, as of such Infant, married Woman, or other
concealed Person were actually dead.

How to proceed where
the concealed Person is
beyond Sea.

There is another Clause how to proceed where
such concealed Person is beyond Sea.

How if such Person
were alive.

Another Clause, That if it shall appear that such
concealed Person was alive at the time of such Or-
der made, that then they may re-enter.

How where such Per-
son cannot be procured
to appear.

Another Clause, where such Guardian, Husband,
or other Person, cannot procure such concealed
Person to appear, how it shall be then. See the
Statute.

Debet & Detinet.

See { Declaration.
Executor.

Where Money grew due in the Testator's Time, and afterwards the Executor doth not pay it, the Action shall be brought against him in the Detinet only; and so in all Actions brought by Executors, as Executors, although the Duty accrued in their own Time, because the Thing or Damages recovered shall be Assets: But if Lessee for Years makes his Executor, and dies, and Rent becomes due after the Testator's Death, there the Action shall be in the Debet & Detinet. So when an Executor or Administrator takes the Profits, nothing shall be Assets, but the Profits above the Rent. Co. 5. Rep. 31.

When Detinet only,
and when Debet & Deti-
net.

The Reason why an Action is in the Detinet against an Executor for the Testator's Debt, is, Because it is not certain what Sum he shall recover, but only according to the Assets which he hath in his Hands. Cro. Jac. 618: So where the Action never commenc'd in the Intestate's Time, but after his Death. Cro. El. 340, 840. pl. 17.

Why in the Detinet
only against an Execu-
tor or Administrator.

Debt in the Detinet upon a Bill wherein the Plaintiff was obliged to pay him 600 Guilders of Polish Money *ad Valentiam* 220 l. *legalis moneta Angliae*, and a Verdict found for the Plaintiff; and what the Value of Guilders was at the Time of the Bill; it was moved that it ought not to be in the Detinet, because upon a Bill obligatory; but should be in the Debet & Detinet: But adjudg'd that inasmuch as he is not to recover the Guilders but the Value of them found by the Jury, and the Value of them is not known to the Court, the Demand in the Detinet is good enough. Cro. Jac. 617. pl. 2. 618.

Debt in the Detinet
upon a Bill for Polish
Guilders brought in the
Detinet, and good.

And how to declare
for the Guilders and
find the Verdict.

Goods sold for 66 l. *Flemish*, which amount to 39 l. 10 s. and upon *Nil debet* it was found for the Plaintiff, and well, though brought in the Debet

How to be brought
for Flemish Money.

& Detinet; but if brought in the Detinet only it might have been for the 66 l. *Flemish* as well as the other. Noy 13. Also it may be brought in the Debet & Detinet for the *Flemish* if it be a Current Coin

A Bond dated beyond Sea, and laid in London.

How an Administrator must bring Debt for Rent against the Lessee of the Intestate.

Where in the *Debet & Detinet* by an Administrator against an Administrator.

How to be brought by an Executor.

Where *Plene Administravit* is no Plea.

Where and how to be brought for Rent against an Executor.

Where it lies in the *Debet & Detinet* against an Administrator.

Cannot be sued in the *Debet & Detinet* for Part, and the *Detinet* for the other Part.

An Executor cannot wave Part.

for he cannot assume the Executorship for Part, and refuse for Part. *1 Ventr. 271. See Aleyn 24.*

Where the Land is not more worth than the Rent, how to be chargeable.

by Proclamation. *ibid.* See *Latch 77* and *84.* and how it shall be where a Bond is dated at *Hamburgh,* and the Action laid in *London. Latch 4.*

An Administrator brings Debt in the *Debet & Detinet* against the Lessee of his Intestate, which Intestate was a Termor; and naught. For although in Debt against an Administrator, he shall be charged in the *Debet & Detinet* in respect of his Possession, and taking of the Profits of the Land; yet in an Action by an Administrator of one who hath a Term, and makes a Lease, and the Reversion goes to the Administrator, there it must be in the *Detinet* only: Because all that shall be recovered, shall be Assets. *1 Lev. 250, 251.*

An Administrator brings Debt for Rent against an Administrator, for Rent incurred in the Defendant's own Time: This is well brought in the *Debet & Detinet,* for nothing is Assets but the Profits over and above the Value of the Rent. *1 Mod. 185.*

If an Executor be Plaintiff in an Action for Rent incurr'd after the Testator's Death, he must sue in the *Detinet* only, because whatsoever he recovers is Assets; but tho' an Executor be Plaintiff, yet if the Lease were made by himself, he must sue in the *Debet & Detinet,* and then *Plene Administravit* is no Plea, for he is charged for his own Occupation. *1 Mod. 185.*

Debt against an Executor for Rent in the *Debet & Detinet,* brought not in the County where the Land lies; and naught: Because though he is sued as Executor, he is charged as Assignee in the *Debet & Detinet* upon the Privity of Estate, not upon the Privity of Contract; and the Action must be brought where the Land lies. *2 Lev. 80.*

Debt in the *Debet & Detinet* against an Administrator for Rent due after the Intestate's Death; and upon a Motion that it ought to be in the *Detinet* only, adjudged that this Action was well brought. *Cro. Jac. 238. pl. 1. Cro. Jac. 411, 546. 1 Cro. 225. 3 Cro. 712,*

An Executor is not suable in the *Debet & Detinet* to Part, and in the *Detinet* to the other Part: Because they require several Judgments, *viz. De bonis Propriis* to one Part, and *De bonis Testatoris* to the other. *3 Lev. 74.*

An Executor that intermeddles cannot wave a Lease, or any other Part of the Testator's Estate; for he cannot assume the Executorship for Part, and refuse for Part. *1 Ventr. 271. See Aleyn 24.*

If the Land be not more worth than the Rent, this may be pleaded in an Action of Debt upon the *Debet & Detinet,* for he is to be charged in the *Detinet* only; though where the Rent is of less Value,

Debet & Detinet.

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Value, he may be charged in the *Debet & Detinet* for that which is accrued in his own Time. 1 *Vent.* 271, 272. 1 *Mod.* 185, 186. See *Aleyn* 34.

An Executor shall be charged in the *Debet & Detinet* upon a *Devastavit*, the Action being upon a Judgment; but it is not allowable in an Action upon a Bond only: Because this Court will not carry this Matter further than it hath been carried before, viz. than to Debt upon a Judgment. 1 *Lev.* 147.

Executor chargeable for a *Devastavit* in an Action upon a Judgment, not upon a Bond.

Debt against an Heir must be in the *Debet & Detinet*: If it be in the *Detinet* only, it is naught, and not help'd by Verdict. 1 *Lev.* 130.

It must be in the *Debet & Detinet* against an Heir.

It must be brought in the *Detinet* only in an Escape against a Sheriff. *Cro. El.* 327.

An Escape against a Sheriff must be in the *Detinet* only.

So upon a Judgment recovered by the Executor, and an Action of Escape is brought upon that Judgment, it must be in the *Detinet*. *Cro. Jac.* 545. pl. 5. 546

Where the Judgment was recovered by the Executor, he must bring the Action for the Escape in the *Detinet* only.

Where an Action is grounded upon a Privity of Contract, it must be in the *Detinet* only; aliter when it is grounded upon a Tort.

How when grounded upon a Contract, and how when upon a Tort.

An Executor lets a Lease and names himself Executor in the Indenture, and brings Debt in the *Debet & Detinet*: And adjudg'd that it well lies because it is upon his own Contract, and he shall have Debt for it as well as if he were possessed in his own Right. *Cro. Jac.* 685.

An Executor lets a Lease as Executor, yet Debt lies in the *Debet & Detinet*.

Debt.

Assignee.
Corporation.
Debet & Detinet.
See Declaration.
Judgment.
Rent.
Venue.

Debt is a Writ, and lieth where any Sum of Money is due, for Money lent, or for Contract, Obligation, or other Specialty, to be paid at a certain Time; and the same not being paid accordingly, the Plaintiff shall have this Action for the Recovery of it.

Debt where it lies.

An

Where Debt lies against the Husband for Goods delivered to the Wife.

An Action of Debt doth lie against the Husband for Goods which were delivered as sold unto the Wife, if they came to the Use of the Husband. *Hill. 21 Car. B. R.* For the Husband and the Wife are but one Person in Law; and the Law intends that a Man hath the Government of his Wife, and that the Wife doth not any Thing without the Leave of her Husband, but by his Direction or License, and for his Good, though it too often falls out otherwise, to the great Prejudice of the Husband.

A Man promises on a Consideration moving from J. S. to perform a Thing that concerns A. B. and does not. J. S. may bring *Assumpsit* against him.

If one do assume upon a Consideration moving from J. S. to perform a Thing which concerns A. B. and doth not perform it, J. S. may bring an Action of the Case upon the *Assumpsit* against him, that did so assume upon himself. *Mich. 22 Car. B. R.* For the Action is grounded upon the Promise made to J. S. upon the Consideration moving from him, and the not performing it to J. S. to whom it was made, is a sufficient Breach to ground an Action.

Debt lies for Breach of a By-Law, or an Amercement in a Court-Leet.

An Action of Debt will lie for the Breach of a By-Law, or for an Amercement in a Court-Leet.

Debt may lie tho' there be no Contract between the Parties.

In some Cases an Action of Debt will lie, tho' there be no Contract betwixt the Party that brings the Action, and him against whom the Action is brought. *Mich. 22 Car. B. R.* For there may be a Duty due to one without any Contract, viz. created by the Law, for which an Action will lie. 2 *Saund.* 343, 344, 345, 366, 367.

Where Debt must be brought against an Administrator for Rent due by the Intestate in his Life-time, and where for Rent growing due in the Time of the Administrator.

If an Action of Debt be to be brought against an Administrator, for Rent which was due by the Intestate, upon a Contract made betwixt the Plaintiff and the Intestate in his Life-time; the Action may be brought in the County where the Contract was made, or the Land lies: But if an Action of Debt be brought against an Administrator for Rent due for Lands, let by the Plaintiff to the Intestate, but growing due in the Time of the Administrator, viz. since the Letters of Administration were granted unto him, the Action must be brought in the County where the Lands do lie for which the Rent is due. *Mich. 22 Car. B. R.* For in the former Case, the Action is meerly brought upon the Contract made with the Intestate; but in the later Case it is brought in respect of the Interest which the Administrator hath in the Lands out of which the Rent Issues.

Indebitatus generally is not good to create a Debt; but it must be shewn particularly for what he was indebted.

Indebitatus generally is not good to create a Debt, but there must be something else made appear to the Court to make a Debt to be due to the Party that brings an Action of Debt, or else the Action will not lie; for he must shew for what he was indebted particularly, as for Money lent, Goods sold, &c. and for

for so much, so that the Court may adjudge whether the Debt for which he declares, may be lawfully sued for in that Action. *Mich. 22 Car. B. R.* For else to declare upon an *Indebitatus Assumpsit*, is no more than if the Parties declared upon a *nudum pactum*.

An Action of Debt doth lie for a Counsellor, or for an Attorney for their Fees, against the Party that retained them. *Mich. 22 Car. B. R. Qu.* Whether it lie for a Counsellor, for his Fees is *honorarium quiddam*, and not *mercenarium*, a Gratuity rather than Wages, or a Salary; by *Roll Chief Justice*: But if it be upon a special Retainer, I conceive an Action will without all Doubt lie for a Counsellor.

Debt lies for a Counsellor or an Attorney for their Fees.

If a Man recover a Judgment in Debt against an Executor, who after the Judgment wastes the Goods of the Testator to the Value of the Debt recovered; Debt lies against him in the *Debet & Detinet*. *1 Saund. 218, 219.*

If an Executor after Judgment in Debt against him, wastes the Testator's Goods, Debt lies against him in the *Debet & Detinet*.

Where an Action of Debt lies at the Common Law for a Tort. *Id. 218.*

Where it lies for a Tort.

An Action of Debt lies against the Marshal of the King's Bench for suffering a Prisoner in Execution to go into the Country with a Keeper, to return at a certain Day; but if the Prisoner was in Custody only upon an Action, then it is but an Action of the Case, and not Debt. *Dyer 278.*

It lies against the Marshal of B. R. for suffering a Prisoner in Execution to go into the Country.

So it is upon an Escape against him, or any other Gaoler. *1 Rep. 2. 12. Pl. Com. 36.*

It lies against any Gaoler upon an Escape.

If one delivers Necessaries to an Infant, *viz.* Meat, Drink or Cloaths, and he promise to pay for them, an Action of Debt or Case will lie against the Infant upon this Promise, if he perform it not; but to this Action, *infra etatem* is a good Plea, and the Plaintiff must thereupon reply, that the Goods sold were for Necessaries *gradu Defendantis requirente*; and upon the Trial the Question will be, Whether the Goods for which the Action is brought, were for the necessary Use of the Person against whom the Action is brought, or not? But if the Party come to an Account with the Infant for what is due unto him from the Infant, and thereby doth state the Sum due unto him, an Action of Debt doth not lie against the Infant for the Moneys stated to be due unto the Party upon this Account; For the Infant can no way be prejudiced by such a Promise to pay for Meat, Drink and Cloaths, if it be proved, (as it must be upon the Trial,) that they were reasonably worth what he promised to pay for them; and therefore it is but Justice that he should be compelled to pay for them: But where the Infant and the Party do account, the Infant may be overreached in the Account, and therefore the Law which protects Infants will not compell him to pay the Debt stated upon the Account. *Trin. 24 Car. B. R.*

Debt lies against an Infant for Necessaries.

But not if the Party come to an Account with him.

If a Woman sole be indebted, and then takes a Husband, the Debt is now thereby become the Debt of the Husband and of the Wife; that is

Where the Wife ought to be sued together with her Husband.

to say, The Wife's proper Debt, and the Husband's Debt in the Right of his Wife; and the Wife ought to be sued for this Debt together with her Husband; and if the Husband die, whereby the Action is abated, yet the Wife may be sued again for this Debt. *Trin. 24 Car. B. R.* For the Death of the Husband doth not extinguish the Debt, but doth only abate the Writ. See in Title *Baron and Feme*.

Judgment reversed because given to recover a Legacy.

A Judgment was reversed in this Court by a Writ of Error, because it was given to recover a Legacy. *Trin. 24 Car. B. R.* For a Legacy is not recoverable at the Common Law, but in the Ecclesiastical Court, or in the Chancery or Exchequer.

Debt lies not against an Executor on a Contract made by the Testator.

An Action of Debt doth not lie against an Executor upon a simple Contract made by the Testator. *Hill. 1649. Jan. 31. B. S. 2u.* Because the Executor is not privy to such Contract, and so knows not how to plead to such an Action, or wager his Law; but an *Indebitatus Assumpsit* well lies.

Where Debt lies against a Gaoler upon an Escape, and where only an Action on the Case.

An Action of Debt doth lie against a Gaoler by the Party at whose Suit the Prisoner was committed in Execution for suffering a Prisoner in Execution to escape; for upon the Escape the Law makes the Gaoler a Debtor to him whose Prisoner is suffered to escape. *Trin. 1650. B. S. 15 Junii. Vide 1 Saund. 218.* But where the Party who escapes is not in Execution, there an Action upon the Case to recover his Damages suffered by the Escape only, and not an Action of Debt, must be brought.

Debt for Rent lies in any County if there be a Privy of Contract.

One may bring an Action of Debt for Rent in what County he pleaseth, where there is Privy of Contract. *9 Nov. 1650. B. S.* Because it sounds not in the Realty.

It lies not against the Lessee after Acceptance of Rent of the Assignee.

After Acceptance of Rent of the Assignee, Debt lies not against the first Lessee for the Rent reserved. *2 Saund. 304. 1 Saund. 240.*

Debt for Arrears of Rent must be brought against all the Partners of the Land.

Debt for Arrears of Rent ought to be brought against all the Partners of the Profits of the Lands liable. *Id. 284.*

Plaintiff demises a House to a Widow rendring Rent. She marries, and Rent is in Arrear during the Coverture, Debt lies against the Husband.

In Debt for Rent: The Plaintiff demises by Indenture a House to a Widow rendring Rent; the Defendant marries her, the Rent is behind during Coverture, the Wife dies, and the Plaintiff brings Debt on the Indenture against the Husband; and adjudged on Demurrer, it well lies. *Raym. 6.*

It lies for an Annuity for Years.

That Debt lies for an Annuity granted for Years, *Id. 11, 12.*

Also upon a Lease of a Fair.

Debt also lies upon a Lease of a Fair; and therefore a Bishop may grant a Fair for Years, because Debt lies; but not for Life. *Ibid.*

For Arrears of an Annuity by Executor of the Grantee.

If an Annuity be arrear and the Grantee dies, his Executor shall have Debt, because the Person of the Grantor was originally charged.

Debt

Debt.

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Debt lies not against the Bail, on his Recognizance upon a Judgment given against the Principal. *Id.* 14.

If the Father desires one to find Physick for his Daughter, Debt lies against the Father. *Ibid.* 67.

Debt lies for a Fine imposed on one for a Contempt committed in a Court-Leet. *Id.* 68.

Debt was brought on a Deed-Poll; on *Oyer*, it was in these Words, It's agreed, That *A.* shall pay to *B.* 700 *l.* for the Lands in *D.* And held that Debt lies upon it.

Declaration in Debt for Rent arrear is good, without shewing the mean Assignment, upon a Demurrer. *Id.* 389, 390.

That an Action of Debt cannot be commenced before Justices of Assize. *Id.* 394.

Debt lies upon a Judgment after part levied by *Elegit.* 1 *Lev.* 92.

Debt for Rent, and demands less than is due, ill. 2 *Lev.* 4.

But declares in Covenant, and demands less than is due, good. *Id.* 57.

One may join two Debts due upon two several Obligations from the same Party in one Action of Debt, 6 Feb. 1650. *B. S.* and declare in one Declaration upon the several Obligations; for there is no Prejudice done to the Defendant by doing it, but rather a Favour in saving him Expences.

By *Glyn* Chief Justice. *Trin.* 1651. Where the Gaoler doth suffer a Prisoner for Debt to escape voluntarily, and wilfully, there cannot be an Action brought again for the same Debt against the Prisoner, for there the Gaoler is liable for the Debt; but it is otherwise where the Escape is suffered by Negligence, or is a tortious Escape in the Prisoner. *Vide ante Arrest.*

If one do deliver Goods to *J. S.* to my Use, if the Party to whom they were delivered do refuse to deliver them unto me, I may either have an Action of Account, or rather an Action of Trover and Conversion for them, against him to whom they were delivered, at my Election. 22 Apr. 1651. *B. S.* For the Delivery of them to my Use, doth vest the Property of them in me.

What Alterations have been made by the Statute of 4 & 5 *Annæ*, in Actions of Debt upon Bills, Bonds and Judgments, and the Proceedings thereupon. See Titles *Declarations, Pleas, Demurrer.*

Debt lies here or in the Admiralty Court upon a Bond made beyond Sea: The Reason why it lies in the Admiralty Court is, because if the Witnesses live beyond Sea, it may be examined there.

Lies not against Bail on his Recognizance on a Judgment against the Principal.

It lies against the Father who desires one to find Physick for his Daughter.

For a Fine set in a Court-Leet.

Where upon a Deed-Poll.

Declaration in Debt for Rent arrear, good on Demurrer without shewing the mean Assignment.

Cannot be commenced before Justices of Assize.

Lies upon a Judgment after Part levied by *Elegit.*

For Rent, and demands less than due, ill.

But in Covenant, good.

Where two Debts may be joined in one Action.

If the Gaoler suffer a Prisoner to escape voluntarily, Action lies not against the Prisoner for the same Debt.

Goods are delivered to *J. S.* for my Use; Account or Trover lies against him if he refuse to deliver them to me.

For the Delivery

What Alterations in Actions of Debt, are made by the Statute of 4 & 5 *Annæ. cap.*

Where Debt lies upon a Foreign Bond.

3 *Leon. Case* 314.
How

Debt for Foreign Money, how to be brought.
Debt lies upon a Statute as upon a Bond.

Attainder of Felony
no Plea in Debt.

Debt for Foreign Money.
And Guineas.

Debt lies not for Rent upon a Lease for Life; what Remedy for it.

Debt lies in this Court upon an erroneous Judgment in *Com Banco*.

the Defendant upon that erroneous Judgment in this Court; if the Record be removed out of the Common Pleas into this Court, the

Defendant may plead *Nul tiel Record*.

If Error be brought on a Judgment in the King's Bench, the Record is not removed, but only a Transcript.

Debt lies upon a Judgment after Error brought.

Lies upon a Judgment upon a *Sci. Fa.*

Debt upon a Judgment against Executors in the *Detinet*.

or *de bonis propriis*; and held good: Because it shall be Affets when recovered, be it the one or the other. 1 *Lev.* 232.

Debt will lie for a Sum in Gros, in the Nature of Rent.

If a Demand be of a lesser Sum upon a Specialty it must be shewn how it is satisfied.

But where the Demand is of no Sum certain, but only what shall be given by a Jury, there a Variation from the first Valuation, is not material.

How Debt is to be brought for Foreign Money. *Cro. Jac.* 617. pl. 2. See Title *Debet & Detinet*.

Debt lies upon a Statute as upon a Bond. *Cro. El.* 355. pl. 14. 461, 494, 319.

The Defendant pleads in Abatement that he is attainted of Felony; held no Plea in Debt. *Cro. El.* 516. pl. 41.

How Debt is to be brought for Foreign Money. *Cro. Jac.* 617. pl. 2. And how to be brought for Guineas. 5 *Mod.* 4, 5, 6, 7.

Debt lies not for Rent upon a Lease for Life; but the Remedy is by Affize if the Plaintiff hath Seisin, or else by Distress. 3 *Rey.* 65. But it lies now by the Statute of *Annæ*.

If there be an erroneous Judgment given for the Plaintiff in a Personal Action in the Common Pleas, and thereupon he brings an Action of Debt against the Defendant upon that erroneous Judgment in this Court; if the Record be removed out of the Common Pleas into this Court, the Defendant may plead *Nul tiel Record*, there being no Record in the Common Pleas to warrant the Action: But if a Writ of Error be brought upon a Judgment in this Court, returnable in the Exchequer-Chamber, which Judgment is erroneous, an Action of Debt upon the Judgment well lies, until the first Judgment is revers'd.

Debt lies upon a Judgment in *B. R.* after Error brought, returnable in the Exchequer-Chamber: For the Writ of Error is only a *Supersedeas* to the Execution. 1 *Lev.* 159.

Debt lies upon a Judgment upon a *Sci Fa.* tho' the Judgment is only *quod habeat Executionem*. 4 *Leon.* Case 287.

Debt upon a Judgment against Executors in the *Detinet* for 20 *l.* Damages, and 8 *l.* Costs, and says not whether the Judgment was *De bonis Testatoris*, not whether the Judgment was *De bonis propriis*; and held good: Because it shall be Affets when recovered, be it the one or the other. 1 *Lev.* 232.

Debt will lie for a Sum in Gros in the Nature of Rent, by way of Contract, when there is no Reversion, though there cannot be a Distress. 2 *Lev.* 80. *Cro. Jac.* 486. pl. 6. 487. See *Aleyn.* 57 and 58.

No Demand can be of a lesser Sum, but it must be shewn how it is satisfied: But when the Demand is of no Sum certain, nor what shall be recovered in Certainty, but only what shall be given by a Jury, altho' he varies from the first Valuation it is not material. *Cro. Jac.* 498. pl. 6. 499.

Assignee of the Reversion must bring Debt for Rent in the proper County. 1 Saund. 238. But he may bring Covenant where the Lease was made: Because Debt is maintainable only upon the Privy of Estate; but Covenant goes only in Privy of Contract. Also Rent arises out of the Profits of the Land: And Covenant is a collateral Thing, where Damages only are to be recovered. 1 Lev. 259.

Assignee of a Reversion must bring Debt in the proper County.

Covenant goes only in Privy of Contract.

Such Action for Debt brought by the Assignee of the Reversion is maintainable by Reason of the Privy of Estate only. 1 Saund. 238.

Such Action is maintainable by reason of the Privy of Estate.

Debt by the Lessor for the Moiety of his Rent against an Assignee of the Moiety of the Land demised for the whole Term, well lies: Because the Assignee having the Estate in the Moiety of the Land, hath Privy of Estate sufficient to be charged by the Lessor with the Moiety of the Rent. 2 Lev. 231.

Debt by Lessor of a Moiety against Assignee of a Moiety.

An Action of Debt, or a *Scire Facias*, lies against a Sheriff for Monies which he hath levied by Verue of a Writ of *Fieri Facias*: For the Law doth not create a Privy by the *Fi. Fa.* betwixt the Sheriff and the Party that sued it out. And the Money levied is the Plaintiff's Due, which the Sheriff is bound by Law, when levied, to pay him. *Vide Mildmay & Smith's Case*, in Saund.

Land, hath Privy of Estate sufficient to be charged by the Lessor with the Moiety of the Rent.

Debt or *Scire Facias* lies against a Sheriff, to restore Execution-Money received by him.

Debt also lies against the Executor of a late Sheriff for Execution-Money received by him *in vita sua*. Lutw. 582, to 584.

Debt lies against an Executor of a late Sheriff for Money received by the Testator.

Debt upon a Bond in C. B., and says only, *quod concessit se teneri, &c. & profert in Cur. scriptum præd. &c.* And assigned for Error, that it was naught, because it was only said, *concessit*, omitting *per scriptum obligatorium*, which is the usual Form. *Sed non allocatur*. Cro. Car. 209. pl. 4.

Debt upon a Bond, *scriptum obligatorium* omitted in the Declaration.

Debt upon a Bond, and says, That *A. B. per Nomen J. S.* became bound: And *Non est Factum* was pleaded, and a special Verdict found, and Judgment for the Plaintiff, but reversed afterwards by Writ of Error. Lutw. 894. a. Cro. El. 897. pl. 22. Cro. Jac. 558.

Debt upon a Bond, and says, That *A. B. per Nomen J. S.* became bound, and naught.

Debt upon a Bond, the Defendant pleads, That the Plaintiff is a Bankrupt, and sets it forth particularly; and that the Debt is assigned. Lutw. 701. Note, Unless the Debt be assigned, the Bankrupt may sue the Bond.

Bankruptcy in the Plaintiff, and an Assignment of the Debt pleaded.

An Action of Debt doth lie upon a Parol Contract in Law betwixt the Parties, and so doth an Action upon the Case: But the Defendant, in case of an Action of Debt upon a Parol Contract, may wage his Law.

Debt or Case will lie upon a Contract.

Debt against an Executor for Rent in the Testator's Time; how to be.

How for Rent due after his Death.

Debt or Covenant lies upon a Covenant to pay 5 *l.* per Annum for five Years before they are out.

The Land extended, a good Plea in Debt for Rent.

In case of an Obligation with Condition, or in case of a Penal Bill, Debt lies upon the first Breach.

of the Condition. Ergo, There is a Forfeiture by that one Breach, of the whole Obligation: But in case of a single Bill it is otherwise.

In pleading Conditions performed, how a Breach could be assigned formerly.

or three Sums at two or three several Days, this is naught upon a special Demurrer; for that by one Default of Payment, the whole Penalty is forfeited,

8 & 9 W. cap. 10.

Must not say, *Testamentum existit*, in Debt for Rent; but *Quod dimisit*.

In Debt for Rent it is sufficient that the Declaration be as general as the Words of the Demise.

How the Plaintiff may declare for Rent.

An Action of Debt is brought against an Executor for Rent due in the Testator's Time; it must be in the *Detinet*: And for Rent due after the Testator's Death, it must be in the *Debet & Detinet*. Jones 169, 170. Cro. Car. 225. contrary to the Opinion in *Hargrave's Case* in Coke.

Upon a Covenant to pay 5 *l.* per Annum for five Years, Debt or Covenant lies for Non-payment before the five Years are expired. 3 Lev. 383, 384.

In Debt for Rent the Defendant pleads, That before the Lease made, a Judgment was recovered against the Plaintiff, and the Land was extended by *Elegit*, and delivered in Execution; and held a good Plea. Cro. El. 398. pl. 3.

But in case of an Obligation with Condition, or in case of a Penal Bill, they may be sued upon the first Breach; for a Penalty can be but once forfeited: And upon the first Non-payment, there is a Breach of the Condition. Ergo, There is a Forfeiture by that one Breach, of the whole Obligation: But in case of a single Bill it is otherwise.

Formerly, if in pleading Conditions performed to the Condition of a Bond, for the Payment of Money at several Times, the Plaintiff in his Replication should assign a Breach in not paying two or three Sums at two or three several Days, this is naught upon a special Demurrer; for that by one Default of Payment, the whole Penalty is forfeited, and the Law will never admit of unnecessary or double Pleading: But the Law is now altered in that Particular, by the Statute of 8 & 9 W. cap. 10. See Title Breach.

Where an Action of Debt for Rent is brought upon a Deed, you must not say there, *Testamentum existit* that the Plaintiff demised; but you must say affirmatively, *Quod* the Lessor *dimisit*, otherwise it is naught. Mich. 4 W. & M. B. R.

In Debt for Rent for Lands in several Vills, *vel earum aliqua*, and also for a Close of Meadow or Pasture; and moved, that it was void for Uncertainty, but held to be good, in a Declaration where no Land is demanded, nor to be recovered. Cro. Jac. 124. pl. 9.

The Plaintiff need say no more in his Declaration, than that he demised to the Defendant, and need not to set forth his own Title. Winch 27.

In Debt for Rent the Defendant pleaded, That an alien Enemy with an alien Army invaded the Nation, and entred upon the Defendant's Possession, and expell'd and kept him out of Possession; so that he could not take the Profits; and adjudged no Plea upon this Difference, *viz.* Where the Law creates a Duty or Charge, and the Party is disabled to perform it without any Default in himself, and hath no Remedy over, as where an House is destroyed by Enemies or a Tempest, the Lessee is excused; but when the Party by his own Act creates a Duty or Charge upon himself, he is bound to make it good, notwithstanding any Accident by inevitable Necessity, because he might have provided against it by his Contract; and therefore if a Lessee covenant to repair an House, though it be burnt down by Lightning, or destroyed by Enemies, yet he ought to repair it. Now this Rent is a Duty created by the Parties upon a Reservation, and had there been a Covenant to repair it, the Lessee must do it, tho' destroyed by Enemies. *Aleyn 26, 27.*

Where the Lessee shall pay his Rent, although expelled by an alien Army, or by Lightning, or other inevitable Accidents, and where not.

In Debt for Rent upon an Indenture, *Nil habuit in Tenementis* is no Plea, because the Deed is an Estoppel: But it is good upon a general Demurrer. *3 Lev. 146.* Also it is a good Plea upon a Deed-Poll. *3 Lev. 193.*

Nil habuit in Tenementis is no Plea to Debt for Rent upon an Indenture.

Debt lies not in the Courts of *Westminster* for exercising of a Trade contrary to the Statute of *5 Eliz. cap. 4.* and by *21 Jac. cap. 4. sect. 4.* *5 Mod. 425.* and how to be brought, see in Title *Information.*

How Debt to be brought upon the Statute of exercising of Trade.

5 Eliz. cap. 4.
21 Jac. cap. 4. Sect. 4.

Declaration.

Declaration.

Amendment.
Debet & Detinet.
See Defaults.
Imparllance.
Pleadings.

A Declaration, what.

A Declaration is a shewing in Writing, of the Complaint of a Plaintiff or Demandant against the Defendant or Tenant, wherein he supposeth to have received Wrong, and this Declaration ought to be plain and certain, because it compelleth the Defendant or Tenant to make answer to it.

After the second Term the Plaintiff shall not add a new Count to his Declaration.

A Plaintiff after Plea pleaded, or before Plea pleaded, after the second Term shall not add a new Count to his Declaration; as in *Indebitatus Assumpsit*, or the like, upon pretence of mending his Declaration. *Per Magistrum Livesay, & alios, &c. Pasch. 21 Car. 2. R.*

A Declaration may be against one in Custody of the Marshal upon an Information, though he do not appear to an Action.

A Declaration may be against one that is in Custody of the Marshal of this Court upon an Information, although he doth not appear to an Action. *Hill. 21 Car. B. R.* For his Appearance is not necessary, because, being in Custody, he is *presens in Curia*, and it is as much as if he had appeared and given Bail to the Action, or else had been committed for not giving of Bail.

When Defendant is bound to take Notice of the Declaration.

If the Plaintiff's Attorney do file a Declaration against the Defendant in the King's Bench Office, after the common Bail filed, the Defendant is in strictness bound to take notice of the Declaration at his Peril. *21 Car. B. R.* And it is not necessary for him to give him a Copy of the Declaration to the Defendant's Attorney; for he may take one out of the Office; yet it is usual to give a Copy, and it is accounted to be fair Practice to do it; and by some Attorneys I have heard it affirmed that it is necessary, and ought to be done, otherwise it is an irregular Practice. *13 Nov. 1650.*

Declaration.

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If an Information be upon a corrupt Contract made against the Statute of Usury, he must express in the Information, that the Defendant *corrupte agreavit*, or else he must shew that the Contract was made *pro usura*, contrary to the Statute. 21 Car. B. R. For he must pursue the Words of the Statute, and those Words are the very Foundation upon which the Statute doth enable the Plaintiff to bring his Action.

What must be shewn in an Information for Usury.

One may not regularly declare against one that is not either in *Custodia Marefchalli*, or that hath not filed his Bail, or that is not a privileged Person in this Court. 21 Car. B. R. For no otherways can any one be said to be present in Court; and so the Court hath no Conusance of the Matter: [For if the Defendant were in the County-Gaol, or other Prison, before the Statute of 4 & 5 W. & M. the Plaintiff could not declare against him, but must bring him up, and turn him over by *Habeas Corpus*; but now by that Statute he shall be charged with a Declaration in the Custody of the Sheriff, or Bailiff of the Liberty in whose Custody he is.]

Against what Persons one cannot regularly declare.

If one be in Custody of the Marshal of this Court at the Suit of J. S. or have put in common Bail in this Court to the Action of J. S. any other Person may put in a Declaration against him, the same Term he was committed in Custody, or did put in Bail as aforesaid. *Note*; In Case of common Bail filed, the Declaration must be filed, *sedente Curia*. 21 Car. B. R. For his being in Custody, or his putting in Bail, do suppose him always present in Court to answer any Person, so that it is needless to take out any further Process to bring him in to answer; but upon such a Declaration given unto him he must plead at his Peril.

Any Man may put in a Declaration against another who is in Custody of the Marshal, or who has given in common Bail, but it must be the same Term.

Where a Bill is filed against a privileged Person, although he is supposed to be always present in Court, yet a Copy of the Bill ought to be delivered to him before the Rules for pleading are out.

Copy of a Bill against a privileged Person must be delivered to him.

If a Bill be filed against a Prisoner, yet if there be not a Copy thereof delivered to the Prisoner himself, or to the Turnkey of the Prison, acquainting him what it is, the Plaintiff cannot proceed to Judgment; but if he doth, the Court will set it aside.

Copy of a Bill against a Prisoner must be delivered to him or the Turnkey.

The Plaintiff may amend his Declaration in matter of Form, after a general Issue pleaded before Entry, without paying Costs, or giving Imparlance; but if he amend in Substance, then he must pay Costs, or give an Imparlance at his Election; also if he amend in Substance after a special Plea pleaded, then he must pay Costs, although he would give an Imparlance. *Per Magistrum Livesay, & alios, Pasch. 21 Car. 2.*

When the Plaintiff may amend his Declaration.

The Plaintiff in this Court is bound by the Law to declare against the Defendant within two Terms next after his Commitment, upon a *Habeas Corpus* in Court to the Plaintiff's Action; but the Court

When the Plaintiff must declare against the Defendant.

Declaration.

upon the Defendant's Motion doth usually make the Plaintiff declare against the Defendant in Custody ; and if upon such Declaration it appears to the Court, that there is no Cause to give special Bail, then the Plaintiff must be enforced to let the Defendant go at large upon common Bail. Also if he do not declare against him in two Terms next after the Commitment, the Plaintiff must then take common Bail of him. *Mich. 22 Car. B. R. and Mich. 1650. B. S.* For it shall be presumed, if there had been Cause for special Bail, the Plaintiff would not have been so dilatory in his Proceedings ; and besides, the Defendant's Imprisonment is made longer by the Plaintiff's Delay, and is considerable.

A Declaration must be certain. A Declaration must be certain, and the Court is not to take Things in it by Implication ; and also if it be not certain, the Defendant cannot make a direct Answer unto it. *Mich. 22 Car. B. R. and Pasch. 24 Car. B. R.* as he ought to do ; for the Law loves Plain-Dealing, and allows not of subtil and catching Pleadings.

It must be filed in the Office. The Plaintiff is to file his Declaration in the Office, and all Copies which are made of it, and the Record it self of the Cause ought to be directed and warranted by it. *22 Car. B. R.* For the filing of it there puts it into safe Hands, and makes it authentical, and it is the Ground-work of the Cause depending, and is as the Original Writ is in the Common Pleas.

How the Plaintiff must declare in an Assumpsit. If an Action upon the Case be brought upon an *Assumpsit*, the Plaintiff must declare upon the whole Promise made, and not upon Part of it, else the Plaintiff upon the Trial will be nonsuit. *Mich. 22 Car. B. R.* For the omitting of any Part of the Promise may alter the Promise, and make the Case different from the Truth and Reality of it as it would have been if the whole Promise had been truly set forth.

How when he declares as Executor or Administrator. Where the Plaintiff doth declare as Executor, or Administrator, he ought to set forth the Probate of the Will, and the Letters of Administration granted unto him, in his Declaration, with a *profert in Curia* of them, otherwise the Declaration is not good, but the Defendant may demur upon it. *Mich. 22 Car. B. R.* For without shewing them they do not entitle themselves to the Action brought, nor make themselves Persons enabled by Law to bring the Action ; for it doth not appear to the Court that there was such a Will made, or that there were such Letters of Administration granted, or that the Plaintiffs are Executors or Administrators under which Title they sue.

But this Demurrer must be special. *Vide ante.*

A Declaration defective in Matter of Form only, is helped by Verdict. If a Declaration be defective in Matter of Form only, and the Defendant doth take no Exception against it, but pleads to Issue, and a Verdict is thereupon found for the Plaintiff, the Defendant cannot afterwards take advantage of this Defect in the Declaration, for the Defect is helped by the Verdict ; but if the Declaration be insufficient in matter of Substance, the Verdict will not help it,

it, but the Plaintiff may take the Advantage of the Insufficiency of it after a Verdict. *Mich. 23 Car. B. R.* For where it is defective in Substance, there can be no good Judgment given, notwithstanding the Verdict, which only finds Matter of Fact, and leaves the Law to the Court.

All Matters which do lie in the Cognizance of the Court, ought to be set forth certainly in a Declaration; for the Court is to give Judgment upon the Pleading, as it stands plain and clear before them; but it is not necessary to set forth certainly Matters of Fact, which are triable by the Jury. *Hill. 22 Car. B. R.*

Matters which lie in the Cognizance of the Court must be set forth certainly in the Declaration.

If the Plaintiff's Attorney cannot find the Defendant's Attorney to deliver a Declaration unto him, he may file the Declaration in the Office, and that shall be accounted a good Delivery of it; so that if the Defendant do not plead according to the Rules of the Court, Judgment may be entred against him. *Pasch. 13 Car. B. R.* For it is intended that Attorneys ought to attend in the Office, and there to inform themselves in the Proceedings of their Clients Causes.

What the Plaintiff's Attorney must do when he cannot find the Defendant's Attorney, to deliver the Declaration to him.

A Thing that is good and warrantable to be put into a Writ, is good and warrantable in a Declaration. *Trin. 13 Car. B. R.* For the Declaration is grounded upon, and warranted by the Writ, and the Declaration doth but set forth at large what is summarily expressed in the Writ.

What is good in a Writ, is good in a Declaration.

A Declaration in *English* is not good; for all Pleadings in Law ought by the Statute to be in Latin. *Pasch. 24 Car. B. R.*

Declaration in *English* not good.

An *Audita Querela* and a *Scire Facias* are in the Nature of a Declaration. *Pasch. 24 Car. B. R.* For they do set forth at large the Cause of the Plaintiff's Action, as a Declaration doth.

Audita Querela and *Scire Facias* are in Nature of a Declaration.

Declarations which are grounded upon original Writs, as all Declarations in the Court of Common Pleas are, except where the Plaintiff is a privileged Person; if they be faulty, they cannot be amended; but a Declaration grounded upon a Bill, as the Declarations in the Court of the King's Bench are, is amendable, if the Bill be not actually filed; for the Bill where it is filed, is as much a Record as an Original. *Pasch. 24 Car. B. R.* Declarations grounded upon Originals, must agree with the Originals; and if they be faulty, it is intended that the Original upon which the Declaration is grounded is also faulty, and so the Plaintiff must purchase a new Original; but the Term being but one Day in Law, the Court hath Power to amend all their Bills and Records the same Term whereof they are filed.

Declarations grounded upon original Writs not amendable. But Declarations upon Bills are amendable before they are filed.

If a Declaration be drawn in the Term, but is not delivered to the Defendant's Attorney that Term, but is delivered unto him before the Effoin-day of the next Term after; this shall be accounted

Declaration delivered before Effoin-Day, shall be accounted a Declaration of the precedent Term.

for

for a Declaration of that Term when it was drawn; the Effoin-day being the first Day of the succeeding Term, upon which Day all the Courts of Law in *Westminster-Hall* are opened, and the Judges sit therein; at which Day the Party may come in and make his Excuse why he cannot appear precisely upon that Day, if he have any legal Excuse to make, and this is called an Effoin. *Trin. 24 Car. B. R.* For before the Effoin-day the Term is not said to be begun; and before that Day it cannot be known whether the Defendant will appear precisely at the Day of the Return of the Writ, or be effoined.

A Declaration may be filed in the Office many Years after it was first drawn, if it were only the Attorney's Neglect.

A Declaration may be filed in the Office many Years after it was first drawn, if it appear that it was only the Attorney's Neglect that it was not filed as it ought to have been. *24 Car. B. R. 19 Aprilis, 1648. B. R.* For the filing of it is not of the Essence of the Declaration, for it is a good Declaration to proceed upon without the filing of it; and the filing of it is but to prevent foul Practice, and to keep it upon Record to warrant the Proceedings.

The Plaintiff may declare against the Defendant of any other Matter the same Term that the Bail is filed.

If Bail, either general or special, be filed for the Defendant, the Plaintiff may *sedente Curia*, the Term that the Bail is filed of, declare against him in any other Matter, besides the Matter that is contained in the Writ, brought by the Plaintiff against the Defendant; but the special Bail are not liable any farther than to such particular Action or Actions wherein they are Bail, and as to those by the By are no more than common Bail. *Mich. 24 Car. B. R.*

The Meaning of a Declaration deliver'd with a *Li. Lo.*

A Declaration delivered with an Imparlance or *Li. Lo.* is in the Language and Meaning of Attorneys, such a Declaration that is delivered with leave for the Defendant to imparl until the next Term. *Hill. 1649. 12 Feb. B. S.* The Words *Li. lo.* do mean *Licentia interloquendi*, which is as much as to have License or Leave to imparl or to advise and speak with his Client to know what he should plead for him.

A Man arrested by a *Latitat* is not said to be in Custody till he has put in Bail to the Action.

When one is arrested by a *Latitat*, or Bill of *Middlesex* out of this Court, he is not said to be in Custody of the Marshal until he hath put in Bail to the Plaintiff's Action, and the Bail be filed; or else be taken by the Writ and committed to the Marshal for want of Bail; and if from that Time the Plaintiff do not declare against the Defendant in two whole Terms after, then he must accept of common Bail, and discharge the former Bail. *Trin. 1650. B. S.* For the Court will presume his Cause of Action is but small, and requires not special Bail, because he is slack in his Proceeding.

A Declaration upon a Bond with a *hic in Curia prolat.* not good, unless shewn; but the Defendant must pray Oyer of it.

By *Glyn* Chief Justice, *Trin. 1658.* If one do declare upon an Obligation with a *hic in Curia prolat.* and do not shew the Obligation, this is not a good Declaration, and therefore after two Terms, the Defendant, if he be *in Custodia*, may go at large upon common Bail; but the Defendant must pray Oyer of it, else the Plaintiff is not bound to shew it.

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The Plaintiff's Attorney is not bound to give a Copy of the Declaration against the Defendant, to the Defendant's Attorney. 13 Nov. 1650. B. S. For the Defendant's Attorney may take a Copy of it out of the Office where the Declaration is filed; yet they usually do it, and it is accounted fair Practice to do it.

The Plaintiff's Attorney need not give a Copy of the Declaration to the Defendant's Attorney.

By Glyn Chief Justice, Mich. 1658. upon a Motion in Arrest of Judgment. A Declaration in an Action of Trespass *quare vi & armis*, is not good with a *quod cum*, &c. because there is no absolute Affirmation of the Trespass, but only by Inference; but an Action upon the Case is good enough; the

A Declaration in Trespass *quare vi & armis*, not good with a *Quod cum*. Contra in an Action on the Case.

Reason is, Because in a Trespass *Vi & armis* a Fine is to be paid to the King, by the Party, for Breach of the Peace, and therefore the Trespass must be positively averred; but in the latter Case Damages are only to be recovered, and the Defendant amerced.

It is not necessary for the Plaintiff's Attorney to set his Hand unto the Declaration, which he delivers to the Defendant's Attorney; but the Defendant's Attorney must receive it without his Hand set to it, if he know him to be the Attorney in the Cause. 28 Nov. 1650. B. S.

Plaintiff's Attorney need not sign the Declaration.

If one be in Custody of the Marshal of this Court, any Person may put in a Declaration against him, and the Declaration so put in is a good Declaration, and the Party must plead unto it, although he be illegally in Custody; for the Court will not trouble themselves to enquire how the Party came into Prison. Pasch. 1652. B. S. For when he is found in Custody he is bound to answer every one's Suit.

Any Man may declare against another who is in Custody of the Marshal.

If a Prisoner be brought into the Court of the King's Bench by a Writ of *Habeas corpus* to answer a Suit there depending against him, a Stranger cannot declare against him there upon the By, until he be in Custody of the Marshal; but he that brought the Prisoner thither by the *Habeas*

If a Prisoner be brought into B. R. by *Hab. Corp.* a Stranger may not declare against him, till he is in Custody of the Marshal.

Corpus, may declare against the Prisoner in Court before he is turned over in Custody to the Marshal. Pasch. 1652. B. S. For the very Writ of *Habeas Corpus* was to bring him into Court to answer to the Party; but a Stranger to the Writ cannot take Notice of his being in Court, but he may take Notice when he is in Custody, though it be at the Suit of another, and needs not to take out Process against him.

Where a Man may declare by the Common Law, he shall not declare upon a special Custom.

In the Case of *Cutler and Cutler*. Mich. 1658. it was held by the Court, That where one may declare by the Common Law, there he shall not declare upon a special Custom, because the Common Law is to be preferred; and therefore if the Plaintiff do declare otherwise the Declaration is not good, if the Defendant will demur to it; but if he wave his Ad-

vantage,

vantage, and plead to Issue, and a Verdict is found for the Plaintiff, he shall not move this Matter in Arrest of Judgment.

One ought not to declare in B. R. 'till the Defendant has filed his Bail.

If Attorneys undertake to file common Bail, and do not, the Court will compel them.

If an Attorney undertakes to file a Common Bail, and doth not, in this Case the Plaintiff is not obliged to file his Bill before the Essoin-Day of the next Term, but his way must be to summon the Attorney who undertook to file the Bail before a Judge, who will compel him to file his Bail, and as soon as that is done to deliver him a Declaration, and give Rules to plead presently; for until Bail be filed the Defendant is not in Court.

Declarations must have Certainty.

Where the Bar shall help the Declaration and where not.

A Declaration must contain Substance not to be help'd by Intendment or Verdict.

What Defects in Declarations are helped by the Statute of 4 & 5 Ann.

An immaterial Allegation shall not hurt a Declaration.

The Plaintiff in his Declaration ought to shew in what Right he sues.

Mistaking of a Sum in a Declaration, is no Error.

Declaration for 10s. where it appears there was 20s. due, and shews not how the 10s. was satisfied, is naught.

One ought not to declare against the Defendant in this Court until his Bail be filed; for before it be filed, he is not *in custodia*, as he is by his Bail, when Bail is put in: By Rolle Chief Justice, *Pasch. 1652. B. S.* That is, if he do put in Bail; but if not, but is turned over to the Marshal, he may declare against him *in Custodia*.

But if an Attorney, either of this Court or of the Common Pleas, undertake to file common Bail, and doth not, this Court will compel him to do it, or commit him; likewise where an Attorney undertakes to file a Common Bail, and doth not, in this Case

the Plaintiff is not obliged to file his Bill before the Essoin-Day of the next Term, but his way must be to summon the Attorney who undertook to file the Bail before a Judge, who will compel him to file his Bail, and as soon as that is done to deliver him a Declaration, and give Rules to plead presently; for until Bail be filed the Defendant is not in Court.

Declarations ought to have two Things, *viz.* Certainty and Truth. *Patridge and Strange. 1 Plow. 84. a. b.*

If a Declaration be defective in Circumstance, there it shall be help'd by the Bar, but not where it is defective in Substance. *Lit. Rep. 17.*

A Declaration ought to contain the Substance of the Matter, otherwise it is not good; and no Matter of Substance can be supplied by Intendment, nor shall the Verdict help it. *Cro. El. 913. pl. 1.*

What Imperfections, Omissions, and Defects in Declarations, are help'd by the Statute *For Amendment of the Law. 4 & 5 Anne*, unless particularly and specially shewn for Cause upon a Demurrer, see Title Demurrer.

The Allegation of a Matter in a Declaration which is not material, and might have been left out, shall not hurt it. *Cro. El. 57. pl. 6, 236.*

The Plaintiff who sues as Executor, Administrator, or Assignee, ought to name himself so in his Declaration. *Cro. El. 823. pl. 22;* or else it is naught upon a Demurrer.

In a Declaration upon an *Assumpsit*, where it is said that *separates denariorum summa* amounted to 20*l.* and they amounted to but 19*l.* held not to be Error, being only the mistaking of the Clerk, especially being less than it ought to be. *Cro. Jac. 569. pl. 8.*

A Man declares for 10*s.* where by his own shewing there is 20*s.* due, and he doth not shew that he was satisfied the other 10*s.* this is an incurable Fault. *Cro. Car. 137. pl. 11.*

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Where a Writ is returnable in *Trinity* Term, and Bail is filed the same Term, and there is no Declaration delivered till after the Effoin-Day of *Michaelmas* Term; there, if the Declaration be delivered before *Crastino Animarum*, the Defendant must plead to enter. And in case of an *Habeas Corpus*, and a Bail filed of *Trinity* Term, and a Declaration delivered after the Effoin-day of *Michaelmas* Term, and before *Crastino Animarum*, the Court was not fully satisfied, whether the Defendant was compellable to plead to Trial in *Michaelmas* Term, as he is in the Case of a *Cepi Corpus*. But the Clerks were of Opinion, That he was not; because it was the Plaintiff's own Laches in not declaring in Time. Also the Court said, That it was the same Case as to Declarations delivered before *Mensem Pascha* in *Easter* Term. *Mich. 8 W. B. R.* See Title *Imparlance*.

See for a Declaration in Covenant several Breaches for want of Repairs assigned and moved against, but yet held good. *Cro. Jac. 329. pl. 8.*

In Covenant there needs no more of the Deed to be mentioned in the Declaration, than only so far as in the Covenant where the Breach is to be assigned, and then must conclude, *Prout per Indenturam, or Articulos, &c. hic in Curia prolatus inter alia plenius apparet*: Nor in Slander, there needs no more Inducement or Preamble than is necessary, except where a special *Colloquium* is requisite. The like is to be observed in Actions upon general Statutes, for there to say, That the Defendant committed such an Act *contra formam Statuti in hujusmodi casu edit. & provis.* is better than to recite the whole Act: (But particular Statutes may be recited at large, and an examined Copy proved at the Trial.)

The Plaintiff need to say no more in his Declaration than that he demised to the Defendant, and need not to set forth his own Title. *Winch 27.*

Where Issue is joined, it is not advisable for the Plaintiff to file his Declaration: But where Judgment is given in the Cause for the Plaintiff upon Demurrer, or by Default or Confession, the Judgment is erroneous for want of a Declaration filed: For before it is filed, it is not upon Record, and so there is no Declaration to warrant the Judgment; but after a Verdict, it is no Error, being aided by the Statute of *Jeofails*.

Declaration with *Middlesex* in the Margent, and *London* in the Body of the Declaration, is naught upon a Demurrer, but good after a Verdict. *3 W. & M. B. R.*

As to the Delivery of Declarations upon *Cepi Corpus* and *Habeas Corpus*; when to plead.

Before *Crastino Animarum*.

Effoin-Day of *Michaelmas* Term.

Mensem Pascha.

Breaches to be assigned for Want of Repairs.

How far the Deed to be set forth in a Declaration in Covenant.

Nor in Slander; how far the Inducement to be.

How far in an Action on a general Statute.

Particular Statutes how to be.

How the Plaintiff may declare in Covenant for Rent.

In what Cases the not filing of a Bill is Error, and in what not.

The Judgment is erroneous for want of a Declaration filed: For before it is filed, it is not upon Record, and so there is no Declaration to warrant the Judgment; but after a Verdict, it is no Error, being aided by the Statute of *Jeofails*.

A Declaration with *Middlesex* in the Margent, and *London* in the Body.

How the *Memorandum* is to be, to avoid Error.

A Declaration of Michaelmas Term, and an Impar lance to Hilary, and then the Issue made up, with a *Memorandum*, *quod alias scil. Termino Sci. Michaelis ult. preterit. &c.* And the Cause of Action is laid to be 10 Novembris, which is in Michaelmas-Term, this is naught. But if the *Memorandum* had been thus, *viz. Memorandum quod die Martis prox. post Oñbas Sci. Martini* (which is a Day in the Term, after the Day whereupon the Action is laid) *Termino Sci. Michaelis ultimo preterito coram Domino Rege, &c.* then it had been well. 5 W. & M. See Show. Rep. 147.

The Court will not amend a *Memorandum* after Error brought.

After Error in the Exchequer-Chamber, the Court will not in any subsequent Term amend the *Memorandum* in the Entry of a Judgment; but the same Term that the Judgment is of, they will upon Motion, amend it: Because the Term is taken to be but as one Day in Law, and the Court have all the Entries before them of the present Term to alter and amend as they shall think fit; but they will not do it of any subsequent Term.

Where the *Memorandum* was before the Action accrued, and the Bill filed after, and the Court would not suffer it to be taken off from the File.

A *Memorandum* was thus, *Memorandum, quod alias scil. Termino Sci. Hilarii*; and upon Oyer of the Condition of the Bond, the Action did not accrue until the eighth of February; so that the general *Memorandum* related to the first Day of Hilary Term, which was before the Action accrued; and after Judgment, Error was brought, and the Plaintiff filed his Bill as of the tenth Day of February. And it was moved to take this Bill off from the File. But there being no other Bill on the File, nor no Rule against the filing of it; and for that upon Examination it appeared, that the Declaration was not delivered to the Defendant's Attorney until after the Cause of Action accrued: Therefore they would not order it to be taken off from the File, but let it stand. 10 W. 3. B. R.

Denied in another Case.

But where in another Case this Matter was assigned for Error in the Exchequer-Chamber, and the Bill certified there, the Court would not amend the *Memorandum*. 6 W. 3. B. R.

False Latin shall not hurt a Declaration.

False Latin shall not hurt a Declaration. Lutw. 885. b.

Where a Declaration refers to.

A Declaration in Banco Regis doth not refer to the First Day of the Term, but to the Day of filing of the Bail. 2 Lev. 13. 176.

Trover and Trespass lie not in one Declaration.

Trover and Trespass will not lie in one Declaration. 2 Lev. 101.

If there be no Bill filed, it is not Error after a Verdict; but if there be an ill Bill, it is Error.

If there be no Bill filed, this is no Error after a Verdict; but if there be a Bill filed, and that proved to be erroneous, that erroneous Bill will reverse the Judgment after a Verdict: For the Statutes of Jeofails do not extend to erroneous Bills, but only where there are no Bills filed.

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Where and how a Declaration may be amended, and where not, *vide* Title Amendment.

Sometimes the Declaration shall be made good by the Bar, as when it wants Time, Place, or other Circumstances; sometimes the Bar by the Replication, and sometimes the Replication by the Rejoinder. But when the Declaration wants Substance, no Bar can make it good; so of a Bar, Replication, &c. 8 Rep. 120. b.

Where the Declaration is good, and there is a Fault in the Defendant's Plea, tho' the Plaintiff have joined Issue upon it, which is found against him, yet the Plaintiff shall have Judgment upon his good Declaration. *Cro. Car. 25. pl. 18.*

If the Plaintiff's Attorney deliver a Declaration to the Defendant's Attorney, and afterwards amends his Declaration, and tenders another Copy to the Defendant's Attorney, as he hath amended it; the Defendant's Attorney is not bound to receive it, except the Court, or a Judge, do order him to receive it. For it may be in Substance a new Declaration, and may require a different Plea, which the Court must judge of, and not the Attorneys.

By an Order made by all the Judges, under their Hands, in *Trinity-Vacation. 12 Willielmi Tertii Regis*, it is ordered as followeth, *viz.* "That from and after the first Day of next *Michaelmas*

Term, upon the Appearance of any Attorney, or other Person, for any Defendant in this Court, the Plaintiff's Attorney shall not be bound to deliver to the Defendant's Attorney the Original Declaration; but instead thereof, shall deliver a true Copy of such Declaration: And that upon the Delivery or Tender thereof, the Defendant's Attorney, or other Person acting for him, shall pay unto the Plaintiff's Attorney, or other Person acting for him, for the Copy of such Declaration, after the Rate of 4 d. per Sheet copy-wise, together with the Stamps or King's Duty thereon, which shall serve, and be in lieu of the Copy of such Declaration usually made by the Defendant's Attorney.

And that upon pleading any General Issue or General Demurrer to any Declaration, before any special Demurrer or special Plea pleaded, the Plaintiff's Attorney shall and may deliver unto the Defendant's Attorney, a Copy of such Issue or Demurrer, who shall pay for the same after the Rate of 4 d. per Sheet copy-wise, and also for the Stamps thereon. And if any Attorney, or other Person, shall refuse to pay for the Copy so as aforesaid tendered, the Plaintiff's Attorney shall and may leave the said Copy of such Declaration in the Office, with the Clerk that keeps the Files of Declarations of this Court, who shall receive the same without any Fee or Reward. And thereupon the Plaintiff's Attorney giving Rules to plead, may for want of

Where and how a Declaration may be amended.

Where the Declaration shall be made good by the Bar, and the Bar by the Replication.

Where the Declaration is good and the Plea naught, the Plaintiff shall have Judgment tho' the Issue be found against him.

The Plaintiff cannot amend his Declaration without a Rule.

The Order for the Defendant's paying of 4 d. a Sheet for all Copies of Declarations.

Together with Stamps.

Where a general Plea or Demurrer, the Plaintiff's Attorney shall deliver the Defendant's Attorney a Copy of the Issue: For which, he shall pay him 4 d. per Sheet, and also for the Stamps.

On Refusal to pay for it, then to leave it in the Office

a Plea

a Plea sign Judgment; and before any Plea shall be received, the Defendant's Attorney shall pay for the Copy of such Declaration and the Stamps as aforesaid. And in Case the Defendant's Attorney shall not pay for the Copy of any General Issue or Demurrer so as aforesaid joined, and also for the Stamps, the Plaintiff's Attorney may sign Judgment, as if no Plea or Demurrer had been given or pleaded.

Where it shall be paid for.

Where the Court will give Leave to amend a Record.

No Declaration by the By must be filed against a Defendant in Ejectment.

but is made Defendant by Rule of Court to defend his Possessions only. 5 W. & M. B. R.

Where an Interest or Estate commences upon Condition, the Plaintiff in his Declaration must shew a Performance.

Declaration, and averr the Performance of it; for the Interest or Estate commences in him upon the Performance of the Condition, and not before.

But *aliter* where they pass presently.

But when the Interest or Estate passes presently, and vests in the Grantee, and is to be defeated by Matter *ex post facto*, or Condition subsequent; be the Condition or Act to be performed in the Affirmative or Negative, or to be performed by the Defendant, or any other, there the Plaintiff may count generally, without shewing of any Performance: And this shall be pleaded by him who is to take Advantage of it. 7 Rep. 10. a.

Annuity granted when promoted.

And until promoted.

How to be set forth in the Declaration.

The Declaration must be in the same County where the Original is sued out, and Bail put in, otherwise the Bail are discharged.

Where the Plaintiff declares upon one Date, he cannot say that it was *primo deliberat* at another Day.

If I grant to a Man an Annuity of 10*l.* per Annum, when he shall be promoted to a Benefice; in his Demand of it, he must shew that he is promoted. But if it be granted until he be promoted, there he shall have a Writ of Annuity, and need not to say he is not yet promoted: Because the Annuity precedes, and the Promotion is subsequent. 7 Rep. 10. b.

An Original is sued out in London, and Bail put in, and the Declaration is in another County. This is good against the Party, but the Bail are discharged, and not liable to a *Sci. fa.* 3 Lev. 235, 245. But it otherwise where the Action is brought by Bill.

Debt upon Bond, and declares, That 20 Maii, 30 Car. 2. the Defendant, by his Bond dated 10 Octobr. *sed primo deliberat* 20 Maii, became bound, &c. And upon a Demurrer it was adjudged, That where

where the Plaintiff declares upon one Date, he cannot afterwards reply that it was *primo deliberat* at another Day; because that is a Departure: For *prima facie*, every Deed is supposed to be made the Day it bears Date; but where the Date is mistaken, the Party may declare, or in his first Plea plead, That the Deed bearing Date such a Day, was *primo deliberat* such a Day, and that the Party then became bound. 3 Lev. 348.

The Plaintiff brought an Action, and his Declaration was naught; he afterwards brings a new Action, and amends his Declaration. The Defendant pleads the Judgment in the former Action, and held an ill Plea. 1 Mod. 207.

Anciently all Deeds pleaded were actually brought into Court, and left in the Hands of the Secondary: To the Intent, that if they were found to be forged, or to be void Deeds, then to be damned.

Where Trespass is brought in the County-Court, and removed by *Recordare* into the King's Bench, and the Damages are under 40 s. so that the Court of King's Bench cannot hold Plea of it; you must, to entitle the Court to proceed therein, say thus: *Kant. ff. T. W. Bar. nuper in Curia Com. A. B. Ar.*

*Vic. Com. predicti teni apud M. in. Com. predicti die Jovis 10 die Maii, Anno Domini 1705, Querebatur versus C. D. de placito transgr, quæ quidem loquela ad Petitionem predicti T. W. Bar. habita est coram Domina Regina apud Westmonasterium ad hunc diem scil. a die Sanctæ Trinitat. in tres Septimanas per breve Domine Regine nunc de Recordare facias loquelam. Et modo ad hunc diem venit tam predicti T. W. Bar. per J. A. Attornatum suum, quam predicti C. D. per E. F. Attornatum suum. Et super hoc idem T. W. Bar. per Attornatum suum predicti queritur quod, &c. and so on. And if the Defendant in the County-Court had pleaded *liberum Tenementum*, and the Plaintiff had removed the Plaint without shewing of any Cause at the End of the Writ; and that the Plaint only, and not the Plea is returned; (which ought to be, because the Superior Court cannot hold Plea under 40 s.) then the Plaintiff must say, *Quæ quidem loquela ad Petitionem predicti (Quer.) eo quod præd (Def.) in placito illo in Curia Com. predicti clamabat Liberum tenementum habita est hic.* Hill. 36. & 37. Car. 2. Rotul. 1157. in Com. Banco. Vide Stat. 22 Car. 2 cap. Rastal*

570. Pleint 1. Brownl. 187.

Trespass *quare clausum fregit* was removed by *Recordare*, where the Plaintiff counted *ad dampnum* 39 s. The Defendant demurred, because the Court had not Jurisdiction of the Cause where Damages are under 40 s. It was said for the Plaintiff, that he had removed this Cause by *Recordare*, because the Defendant had pleaded *Liberum tenementum*; and so it is not triable in the County-Court. *Curia*. It shall be intended that the Action was originally brought in this Court, because the Declaration is *Vi & Armis*. And where an Action of Trespass is removed out of the County-Court, the Declaration ought to be without *Vi & Armis*. It was also held, That a Declaration *Vi & Armis*, in Trespass, may be laid under

How it may be.

Plaintiff had an ill Declaration, and afterwards amends it; Defendant pleads the Judgment in the former Action, and held to be ill.

All Deeds brought into Court must be left with the Secondary.

Where Trespass is brought in the County-Court, and removed when it is under 40 s. how to declare in this Court.

See the next Case following.

The Declaration.

22 Car. 2. rap.

See the next Case before.

under 40 s. Damages, because the King is to have a Fine and a *Capias* for it. *Lambert and Thurston. Hill. 1 W. & M. C. B.*

Declarations for Words. See *Darr. Abr.* from *Fol. 266. to 270.*

It must be *Malitiose dixit*.

In a Declaration for Words, it was not laid, *Quod malitiose dixit, &c.* and yet held good, if the Words themselves are malicious and slanderous.

Telv. 113. Style's Rep. 239. But the safe and sure Way is to lay it, *falso & malitiose dixit, &c.*

How Words must be laid.

The Words must be laid expressly and positively, not with an *hec Verba vel consimilia. Cro. El. 645.* Nor with a *quorum tenor sequitur in hec Verba. Cro.*

El. 857. Nor *ad tenorem & effectum sequentem. 3 Mod. 72.*

Where *Vi & Armis* shall not be.

A Declaration for Negligence, or a Non-Fezance shall never be laid with a *Vi & Armis. Co. 9. Rep. 50. b.*

Declaration begins in Trespass, and the Action in Case yet good.

If a Declaration begins, *Queritur de placito transg. pro eo quod, &c.* yet it may be a Declaration in Case, notwithstanding that it is laid, *De placito transg.* for that will serve indifferently for Trespass or Case. *Cro. Car. 325.*

Quod cum and *per quod*, in a Declaration.

The Plaintiff declares *Quod cum* he was seized of a Close adjoining to a Common; the Defendant, *decem perticatas sepium Clausi predicti prostravit & sic prostrat* for such a time *custodivit per quod* the Cattle depasturing in the Common, came into his Close and eat his Grass, *ad dampnum, &c.* Where it is Case, and This is good, notwithstanding the Trespass is laid where Trespass.

to be in the Plaintiff's own Soil; for it beginning *Quod cum*, and concluding *per quod*, it appears to be an Action upon the Case, and the *Causa causans* of the Damages may be laid to be *Vi & Armis*, or without it. *Aleyn 84.*

Where a Bill was for 40 s. for Payment of 20 s. and the Plaintiff had not set forth in his Declaration that the 20 s. was not paid at the Day, and held to be naught.

A Declaration was upon a penal Bill of 40 s. to pay 20 s. and he had not set forth that the 20 s. was not paid at the Day; for otherwise the 40 s. is not due: And of this Opinion was the Court. For it is not a Bond with a Condition. *Cro. Car. 515 pl. 14.*

In Assault and Battery the Fact laid to be after the Action brought, but yet good.

In Trespass, Assault and false Imprisonment, the Plaintiff lays in his Declaration to be done six Months after his Declaration and Action brought: And after a Verdict for the Plaintiff this was moved in Arrest of Judgment, but he had his Judgment: For, *per Curiam*, There must be Evidence given of the Fact done before the Action brought, the Time is but a Circumstance of a Thing done. *5 Mod. 286, 287. See Title Trespass.*

Deeds.

See { Covenants. } { Non est Factum. }
 { Date. } { Pleas. }
 { Exposition. } { Power. }
 { Leases. } { Uses. }

A Deed is a Writing, either indented or not indented, or else a Deed Poll; which writings being signed, sealed and delivered, do prove and testify the Agreement of the Parties whose Deed it is, to the Matters contained in such Deed.

What a Deed is.

If all the Parts of a Deed may by Law stand together, no one Part of that Deed shall be interpreted so as to make either the whole Deed or any Part of it to be void. *Pasch. 24 Car. 1. B. R.* For this would be a Comment to destroy the Text, and not to explain it.

If all the Parts of a Deed agree, no one Part shall be interpreted so as to invalidate the Deed.

Where there are two Sentences in a Deed, the second may well explain the first; for *ex precedentibus & consequentibus est optima explicatio.* 1 Roll. Rep. 375, 376.

The second Sentence shall explain the first.

If it do not appear by the Fabrick of the Deed, that Lands do pass by the Deed, by way of Feoffment; yet the Land may pass by it by way of Use, if there be a Consideration, which is sufficient in Law to raise an Use expressed in the Deed: For if a Deed can by any Construction of Law be construed to have any legal Operation, the Law will not make it utterly void, though it cannot operate as the Fabrick of the Deed purports it should.

Tho' Lands do not appear to pass by the Deed by way of Feoffment, yet they may pass by way of Use.

There are but three Things of the Essence and Substance of a Deed, viz.

What Things are of the Essence and Substance of a Deed.

1. Writing in Paper or Parchment.
2. Signing and Sealing.
3. Delivery: For when a Deed is delivered, it takes its Effect from the Delivery, and not from the Date. 2 Rep. 5. a.

There are three Grounds for the Exposition of Deeds :

Three Grounds for
the Exposition of Deeds.

1. They must be most beneficial for the Taker.
Carter 105. Poph. 130. 1 Rep. 76. Raym. 142.

2. They shall never be void, where the Words may be implied to
some Intent. *Plow. 160. b.*

3. The Words shall be construed according to the Intent of the Par-
ties, and not otherwise. *Plow. 160. b.* So that all Parts may be
effectual. *Poph. 138. Carter 98.*

When the Words are
repugnant, they shall be
rejected.

When the Words in a Deed are repugnant, they
shall be rejected; and Judgment ought to be given
upon the other Words. *Cro. El. 420.*

What Constructions
to be made.

The Law shall never make any Construction
against the Purport of a Deed to the Prejudice of
any, or against the Meaning of the Parties. *Co.
Litt. 313. a.*

What Deeds of Trust,
Uses, &c. shall be good.

What Deeds of Declaration of Uses or Trusts,
or for the leading of the Uses of any Fines or Re-
coveries, shall be good, by the Statute of 4 & 5
Anne, notwithstanding the Statute of *Frauds*. See
Title *Uses*.

4 & 5 *Anne*.

How the Construction
of a Deed ought to be.

Such Construction ought to be made of a Deed,
that it may agree with the Rule of the Law, and
the Intent of the Parties to the Deed, and that all
the Deed may stand together. *7 Rep. 42 a.*

What is the material
Thing in a Deed.

The indenting or not indenting of a Deed, is
not material; but the being or not being Party, is
the material Thing: For one who is not a Party to
a Deed made between Parties cannot take, unless
by way of Remainder. *3 Lev. 139, 140.*

Where a Deed-Poll
shall pass as an Indenture.

A Deed was indented, but begun with, *To all
Christian People*, without the Words, *This Indenture*,
and was in the first Person; but both the Parties
having set their Seals to it, it is sufficient. *3 Leon.
Case 29.*

Every Deed is sup-
posed to be made the
Day it bears Date.

Prima Facie every Deed is supposed to be made
the Day it bears Date. *3 Lev. 348.*

To what Time the
Subject's Deed hath Re-
lation: And to what the
King's.

The Deed of a Subject hath relation only to
the Time of the Delivery, and not of the Date:
But the King's Charter to the Time of the Date on-
ly. *Lutford and Gretton. 2 Plow. 491. b.*

How a Deed is to be
executed by Letter of
Attorney.

Where a Deed is by Letter of Attorney signed
and sealed, it ought to be sealed and subscribed
with the Name of the Master who gave the Autho-
rity. *3 Lev. 140.* See Title *Power*.

A Deed

A Deed cannot be delivered as an Escrow to the Party himself, who is to take by the Deed: For the Delivery of it to the Party who is to take by the Deed, makes it the Party's Deed who delivered it, and so it must work upon the Delivery. See 9 Rep. 137.

A Deed cannot be delivered as an Escrow to the Party himself.

The Words in an Indenture are the Words of all Parties to it, and the Words shall be taken according to the Intent of the Parties. 1 Plow. 134.

The Words in an Indenture are the Words of all Parties.

A Rasure of a Condition, or the Interposition of Words in the Condition of the Bond, being Words material, avoids the Deed. Cro. El. 627.

A Rasure or Interposition of Words avoids the Deed.

Where Covenants are several, if the Seal of one is broken off, it avoids not the Deed, but only as to him: But if the Covenantor's Seal be broken off, it destroys the Deed. 5 Rep. 23. a. 11 Rep. 27. a. Cro. El. 546. but a Rasure would avoid it. Cro. Eliz. 546.

A Seal broken off, where it destroys the Deed, and where not.

The Deed of Feoffment to Uses belongs to the Feoffee, and not to the Cestuy que Use. Cro. El. 357. pl. 15. Cro. Jac. 217. pl. 5.

To whom the Deed of Feoffment to Uses belongs.

If a Deed says, *This Indenture made*, whereas the Deed is not indented, yet it may be a good Deed to some Effects; for it may work as a Deed-Poll, though it cannot work as an Indenture. 5 Rep. 20. b.

If a Deed says, *This Indenture*, when it is not indented, it may operate as a Deed-Poll.

Where a Deed is by Indenture, and not between Parties, a Covenant may be with a Stranger, as if it were a Deed-Poll; but otherwise it is between Parties: Because no Stranger can take Advantage thereof by way of Action. 3 Lev. 139, 140.

Where a Covenant may be with a Stranger to the Deed.

A Deed-Poll was made between A. and B. one covenanted to one, and the other to the other, and each of them signed, sealed and delivered it; this is a good Deed to both. Cro. El. 483. pl. 18.

Each Party sign and seal a Deed-Poll, this is a good Deed to both.

If an illiterate Man be bound to make a Deed, he is not bound to seal and deliver any Writing tendered to him, if some Body be not present who can read it to him, if by him required: But if no Person be there who can read it, he may refuse to execute it. 2 Rep. 3. a. b.

How and when an illiterate Man is bound to make a Deed.

A Deed was brought to an illiterate Man to seal as an Acquittance, which in truth was a Release, but read by a Stranger as an Acquittance only: And adjudged to be no Deed, because it was read falsely to him, although by a Stranger of his own Head. 2 Rep. 9. See 11 Rep. 27. b. 28. a.

A Deed read falsely to an illiterate Man, is not his Deed.

Also such illiterate Person is not bound to execute the Deed, unless there be a Person present who can read it. Also, although the Writing be not read, yet if the true Effect be declared, it is sufficient. 2 Rep. 9.

Such Person is not bound to seal, unless there be a Person present who can read it.

An Estate of Freehold cannot commence in Futuro. 2 Rep. 55. a.

A Freehold cannot commence in Futuro.

When

Where the Person had no Power to make it a Deed, and afterwards had.

When the Person at the first Delivery hath no Power or Ability in Law to make such Deed, and before the second Delivery he hath a Power, yet the Deed is void. But when the Person at the first Delivery had Power and Ability in Law to contract, but cannot perfect this, till an Impediment be removed before the second Delivery, the Deed is good. 3 Rep. 35. b.

Condition to perform Covenants in an Indenture made between Baron and Feme, and the Defendant and the Feme never sealed it.

Where it shall be an Estoppel, and where not.

Estates by Implication may be by Will, not by Deed.

Where give, grant, bargain, sell, enfeoff and confirm, in Consideration of natural Affection, amounts to a Covenant to stand seized.

other Execution, but Inrollment in Chancery within six Months, and was made for those Considerations aforesaid, and none others; neither was the Daughter in Possession at the Time of the Grant, or any Livery made.

A good Deed by Covenant to stand seized to Uses.

In this Case it was adjudged by the King's Bench, and affirmed in the Exchequer-Chamber, That this was a good Deed, by way of Covenant to stand seized to Uses, and that the Inrollment made nothing in the Case.

And, 1st, it was held, That the Words (*Covenant to stand seized to the Use*) are not absolutely necessary in a Deed.

2^{dly}, That no Conveyance admits of such Variety of Words, as a *Covenant to stand seized to Uses* doth.

3^{dly}, That if the Words *give* and *grant* had been alone in the Deed, there would have been no Question in the Case; and that *Utile per inutile non vitiatur*.

Oftentimes taken in various Senses.

4^{thly}, That they sometimes were taken as a Grant, sometimes as a Release, and must be always taken most strongly against the Grantor. *Inter Crossing & Scudamore in Ventris*, or some of the *Mod. Rep.*

Where Oath must be made of the Loss of a Deed, and where not.

When a Bill in Equity is exhibited to have Money due upon a Bond that is lost, there must be Oath made of it; otherwise such Cause is properly triable at the Common Law: But if the Case be proper in its own Nature for a Court of Conscience, there, though it be alledged that

that the Deed is lost, Oath need not be made of it; as where a Performance in Specie is desired: Because there the Common Law cannot grant Relief, but it can only give Damages for Covenant broken.

Default.

See { Challenge.
Jury.

Default is legally taken for a Non-appearance in Court.

A Default, what.

Before a Verdict is taken by Default, the Cryer of the Court calls the Defendant three Times, and then if the Party doth not appear, the Plaintiff's Counsel doth pray, That the Inquest may be taken by Default. He is called three Times, to shew if he hath any Challenge to the Jurors; and if he doth not appear upon the Clerk's Calling, then the *Capiatur per Default* is endorsed on the Back of the Panel: And this is the only Meaning of the Default, *viz.* He makes a Default as to his Challenges only.

Where a Verdict is taken by Default, and what the Default is.

Where two are to recover a personal Thing, the Default of one is the Default of the other: But when they are to discharge themselves of a Personalty, the Default of the one is not the Default of the other. 6 Rep. 25.

Where the Default of one is the Default of the other in personal Things.

Defeazance,

What a Defeazance is.

A Defeazance is a Condition relating to a Deed, in such Manner as there are Conditions to Obligations, Recognizances, or Statutes; which being performed by the Obligor or Recognizor, the Act is disabled and made void, as if it had never been done.

There cannot be a Defeazance to a Judgment before it be given, but Covenant will lie.

A Man cannot make a Defeazance of a Judgment before it is given; but an Action of Covenant may lie in such Case. *Cro. Jac. 837. pl. 11.*

Letter of License not to sue, is but a Defeazance: No Release.

A Letter of License not to sue, upon Pain of forfeiting the Debt, is no Release; it is but a Defeazance, and such an one as may be by another Deed. *Show. Rep. 331, 334.* But if the Party sues before his Time is out, it will be a Forfeiture of his Debt, if it be so mentioned in the Letter of License.

Execution must not be sued out before the Time in the Defeazance is past.

Execution sued out before the Time in the Defeazance is past, shall be set aside; because the Court will not be a Stale for such Abuses. *5 W. & M. B. R.*

Where the Action is founded upon a Deed, it cannot be defeazanced but by Deed.

A Defeazance for Payment of further Money upon a Bond, cannot be but by Deed: For that the Cause of Action being founded upon a Deed, no Defeazance can be thereof afterwards without Deed. *3 Lev. 234.*

Where a Defeazance may be pleaded in Bar to avoid Circuity of Action.

The Defendant pleaded, That after the Bond entred into, the Plaintiff by his Indenture covenanted, That if he paid 100 l. such a Day, the Bond should be void; and he alledges Payment: And upon a Demurrer, held that he shall not be put to his Action of Covenant, but may well plead it in Bar. *Cro. Eliz. 623. pl. 16.*

Money may be pleaded to be paid at the Day, if paid before the Action.

Money may be pleaded to be paid, though not paid at the Day mentioned in the Defeazance, per Statute 4 & 5 Anne. See Title Pleas.

4 & 5 Anne.

An Estate settled shall not be defeazanced afterwards.

An Estate first made shall not be defeazanced by a Defeazance made afterwards. *Browning & Beeston. 1 Plow. 133. a.*

De Injuria sua propria.

Sec { Issue.
Justification.
Pleas.

DE son Tort Demesne, or De Injuria sua propria absque tali Causa, are certain Words of Form used in Actions of Trespass, or in Case for Words by way of Replication to the Defendant's Plea.

De son Tort, what it is.

De Injuria sua propria, without the Words *absque tali Causa*, is naught. 5 W. & M. B. R. Lwtw. 1384. Cro. Jac. 598.

De Injuria sua propria, omitting *absque tali Causa*, is naught.

Where a Plea in Bar contains a Title, a Replication *de son Tort sans tiel Cause*, is naught. 1 Lev. 307. 3 Lev. 49.

Where it is naught.

De Injuria sua propria is not any Plea where the Defendant justifies by claiming an Interest in the Freehold to himself. But where one claims not any Interest, but justifies by Command or Authority derived from another, it is good. Cro. El. 539. pl. 2. 540. Latch 221.

It is no Plea where the Defendant claims an Interest in the Freehold.

But where he justifies by Command or Authority, *aliter*.

In Replevin the Defendant as Bailiff to J. S. of a third Part of the *locus*, &c. justifies for Damage Feasant: The Plaintiff says, That a Stranger was seized of the other two Parts, and by his License he put in his Cattle: The Defendant says, *De Injuria*, &c. The Plaintiff demurs; and adjudged for him; for the special Matter ought to be answered. Cro. El. 812. pl. 19. See Latch 221.

Where there is special Matter, *de son Tort* will not do.

So also where Customs, &c. are in the Plea, it is multifarious. 3 Lev. 49.

So again.

Upon *de son Tort* there cannot be Variety of Matter put in Issue, as Matter of Record, and Matter of Fact. 3 Lev. 65. 2 Leon. Case 108. Latch 221.

Double Matter must not be put in Issue upon it.

The General, *de Injuria sua propria*, is properly where the Defendant's Plea consists meerly of Matter of Excuse, and no Matter of Interest. 8 Rep. 67. a.

When *De Injuria sua propria* is to be replied generally.

When

De Injuria sua propria.

Where the Plaintiff ought to answer particularly; and not to reply generally.

Justification as Servant, per Mandatum, for Right of Common.

Where it is not good without a Traverse.

Where *de son Tort* is no Issue.

But there should be a Traverse.

Where it is not good without a Traverse.

And where good with it.

Where it is good, with or without a Traverse.

How it ought to conclude.

Where it is a good Replication in an Action for Words.

When by the Defendant's Plea any Authority or Power is derived from the Plaintiff; there, altho' no Interest be claimed, the Plaintiff ought to answer this, and not to say generally, *De Injuria sua propria*.

Absque tali causa refers in a Replication to the whole Plea, and not to the Commandment, where the Defendant justifies as Servant. 8 Rep. 67. a.

Where the Defendant justifies by Vertue of a *Capias* to the Sheriff, and a Warrant upon it, *De son Tort*, generally, is no good Replication; for then the Matter of Record would be Part of the Cause, (for all makes but one Cause) and the Replication ought to be *De son Tort*, and traverse the Warrant, which is Matter of Fact: But such Replication is good, where the Warrant comes out of a Court, which is not a Court of Record, as a County-Court, &c. 8 Rep. 67.

Where a Man justifies for a Way, or such particular Cause, *De Injuria sua propria* is no Issue; but he ought to traverse particularly the Prescription alledged. Cro. Jac. 599.

When the Defendant *in jure proprio*, or as a Servant to another, claims any Interest in a Common, or to a Rent-Charge issuing out of the Land, or to a Way; there *de son Tort* generally is not good: But if the Defendant justifies as Servant, there in some of the said Cases it is good with a Traverse of the Commandment, it being material; for the general Replication *de son Tort*, is properly when the Defendant's Plea consists merely of Matter of Excuse, and no Matter of Interest. 8 Rep. 67. a.

There ought to be a Conclusion to the Country in a Replication of *De son Tort*; because the Replication in this Case ought to make an Issue of it self. 3 Lev. 65. Cro. Car. 164. pl. 8.

In an Action for these Words, *Thou hast forged a Bond*, the Defendant justifies the Forgery, and the Plaintiff replies, *De Injuria sua propria*, &c. This is a good Replication: For tho' a special Forgery is alledged, yet it need not to be specially traversed. Cro. El. 607.

Delivery.

Delivery.

Day, and Day of the Date.

Deed.

See Ejectment.

Lease.

Power.

After a Writing is signed, it is the Delivery which makes it a Deed; for without Delivery it is no Deed.

Delivery, what.

The Course now is to deliver a Copy of the Declaration to the Tenant in Possession, or to his Wife, (The Delivery to a Servant or Child is not good.) and at the same time to acquaint them with the Contents thereof; and also to give them Notice, That unless they forthwith appear by some Attorney, there will be Judgment against them, and they will be turned out of Possession.

How to deliver a Declaration.

A Deed cannot be delivered as an Escrow to the Party himself to whom the Deed is made. *Trin. 24 Car. 1. B. R.* But it must be delivered to a Stranger as an Escrow; for so soon as it is delivered to the Party to whom it is made, it takes Effect as a Deed, and cannot be an Escrow: But when it is delivered as an Escrow, it takes no Effect until it be delivered over to the Party to whom the Deed is made. See *Hob. 246. Cro. El. 884.*

A Deed, as an Escrow, cannot be delivered to the Party, but must to a Stranger; and why.

The actual Delivery of a Writing sealed to the Party is good, without any Words of Delivery. *9 Rep. 136. b. 137. a. b.*

What Delivery of a Writing is good.

But where the Party signed and sealed the Bond, and cast it upon a Table, and the Plaintiff took it without any Delivery, or other thing amounting to a Delivery, this will not make it a Deed; but if he had so done and said, *This will serve*, or such like Words, then it had been a good Deed. *1 Leon. 140. Case 193.*

It is the Delivery which makes the Deed.

Where a Delivery in Law will do.

Where a Writing was read, and signed and sealed, but not deliver'd, but left behind them, was held a good Delivery in Law, because the Parties came to that Purpose, and performed all the Requisites but an actual Delivery. *Cro. El. 7. pl. 4.*

A Delivery of one Part makes that a Deed.

A Deed indented was made between the Plaintiff and Defendant; the Defendant sealed his Part and deliver'd it to the Plaintiff, but the Plaintiff did not deliver his Part; this is a good Deed of the Defendant. *Cro. El. 212. pl. 4.*

What Delivery of a Deed makes a Livery.

The Delivery of the Deed upon the Land without apt Words, (as in the Name of Seisin, &c.) will not amount to a Livery. *9 Rep. 137. b.*

Of Lease, Entry and Ouster:

And Delivery of Declarations in Ejectment upon the Land.

It hath been the Course in the Case of Ejectments, for the Lessor of the Plaintiff (or the Party to whom he makes a Letter of Attorney) to deliver the same upon the Land to the Lessee, which puts the Lessee into Possession; and whosoever afterwards comes upon the Land without his Consent, is an Ejector. But this Course is long since altered, except it be in some special Cases, as where the Tenant is run away, and the House is empty, and no Possessor to be found to deliver the Declaration to: For there, there must be a Lease sealed upon the Ground, and an Ejectment brought against the casual Ejector; and the Court must be moved in it for Judgment.

Where a Man hath two Powers to deliver a Deed, he may make use of either.

If one hath an Authority under Hand and Seal to deliver a Deed to another, and also a verbal Authority to do it, he may make use of which of them he pleases, but not of both; for that which he makes use of shall be effectual: For the Law will not allow of unnecessary or superfluous Acts.

Tenant for Life, Remainder in Fee, Leases.

A Lease made by Tenant for Life, Remainder in Fee, how it shall operate. See Title Leases.

See more in Title Power.

See more in Title Power.

Delivery of a Writing sealed to the Party.

Delivery of a Writing sealed to the Party.

Delivery of a Writing sealed to the Party.

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Delivery of a Writing sealed to the Party.

Delivery of a Writing sealed to the Party.

Demand.

Demand.

See { Acceptance.
Nomine Poenæ.
Rent.

Demand is a Term of Art; and therefore if a Man makes a Release of all Demands, this is the best Release to him to whom it is made. *Litt. 117. a.* There are also Demands for Rent, and other Matters.

The Meaning of the Word.

Where there is a Demand of a Thing to be made, there the Demand must be a legal Demand, that is, it must be made in such Manner as the Law requires; otherwise he that made the Demand can take no Advantage in Law upon this Demand. *Hill. 21 Car. B. R.* That is, where the Law doth direct a Demand to be made by one Person unto another; for the not doing whereof, he that demands the Thing to be done, may by Law take an Advantage against the other Person for the not doing thereof, there it must be a legal Demand.

A Demand must be in such Manner as the Law requires.

A Demand must be made upon a Promise to do a collateral Thing. *Yelv. 66, 67. 3 Lev. 363.*

It must be made of a Promise to do a collateral Thing.

That a *Nomine Poenæ* is not forfeited without a Demand of Rent. *1 Saund. 286.*

A *Nomine Poenæ* not forfeited without a Demand of Rent.

A Demand of a Rent reserved upon a Lease made of a Messuage with Lands belonging to it, ought to be made at the Messuage, because the Messuage is the most eminent Part and Place of the Thing let, and most notorious for the Lessee to take the best Notice of the Demand. *21 Car. B. R.* For the Lessee shall be presumed to be more conversant there than in any other Place; yet if the Demand were made upon any Part of the Land, and the Lessor can prove that the Lessee was there, and took Notice of it, I suppose it is a good Demand; but although he be not upon the House when the Demand was made at the House, yet that is good enough, the House being the most notorious Place, at which Place the Law requires the Demand to be made.

A Demand of Rent must be made at the Messuage.

How an Issue shall be taken where a Demand upon Condition of Re-entry for Non-payment of Rent, &c. is pleaded, and the other Party says that he was ready to pay, &c. *2 Lnt. 1138.*

How to take Issue, where a Demand is pleaded.

If the Demand is pleaded half an Hour before Sun-set, and the Jury find a Quarter of an Hour, it is good.

If Rent is reserved, &c. with a Condition of Re-entry for Non-payment, and a Demand is pleaded by the space of half an Hour before the Sun-set, upon which Issue is taken, and the Jury find that the Rent being 7 l. 10 s. was demanded by a Quarter of an Hour, &c. yet it is good. But here they found that the Rent was demanded as due at the Time of Demand, where it ought to have been as due at the Feast before; and therefore Judgment against the Plaintiff. 1 Lut. 139.

Where no actual Demand is requisite.

If Rent is granted with a Clause of Distress for Non-payment at the Day, &c. *existen' legitime petit'*; there no actual Demand is requisite. 2 Lut. 1230.

Debt brought for Money due on a Bond, and Distress for Rent, are good Demands in Law.

The Party's bringing of an Action of Debt for Money due upon an Obligation, and the taking of a Distress for Rent by him unto whom the Rent is due, is a good Demand in Law of the Debt due by the Obligation, and of the Rent. *Trin. 22 Car. B. R.* For in the one Case the Money is demanded in the Writ, and in the other the taking of the Distress is a real, though a silent Demand of the Duty due, for the which the Distress is taken.

In an implied *Assumpsit* Action brought is a good Demand; otherwise in an actual *Assumpsit*.

The bringing of an Action is a good Demand of the Money upon an *Indebitatus Assumpsit*, where it is an implicate *Assumpsit*, but where it is an actual *Assumpsit*, there a Demand is requisite.

A Demand in a *Præcipe* to recover Lands must be more certain than in a Writ of Dower.

A Demand in a *Præcipe* to recover Lands ought to be more certain than a Demand in a Writ of Dower. 18 Nov. 1650. B. S. For Dower is one of the Things favoured in Law, and the Demand in to be made by a Woman, who is not presumed to be constant of the Punctilio's of the Law.

The Law makes a Duty payable without Demand, but not where there is no Duty till Demand.

Where there is a Duty which the Law makes payable upon Demand, there needs no Demand to be expressly laid; but where there is no Duty till a Demand, there a Demand must be laid to make it a Duty. *Trin. 3 Anna B. R.*

A Demand of a Duty, when requisite.

Debt upon Bond to be paid upon Demand; this is a Duty presently; and therefore needs no Demand, as it doth in Case where the Plaintiff hath not any Cause of Action until a precedent Act done by him. *Cro. El. 548. pl. 22. 721. pl. 49.*

Where the bringing of the Action is a sufficient Demand.

Debt upon Bond conditioned to pay 100 l. at the full Age of A. B. if it be demanded; the Defendant pleads, That the Plaintiff did not demand it: And adjudged to be no Plea, because the bringing of the Action is a Demand. *Cro. Jac. 242. pl. 8. 57.*

Where there is a Demand by Suit in Law or Equity, there must be Certainty of the thing demanded.

It is a Rule, that wheresoever there is a Demand in Law or Equity, there must be a Certainty of the Thing demanded to be adjudged or decreed. *Chanc. Rep. 309.*

Demand.

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If there be no Place expressed in a Deed where a Rent for Land, or a *Nomine pæne*, or any other Thing demandable shall be made, the Law doth then direct, that the Demand shall be made upon the most notorious Place on the Land, &c. out of which the Rent, or *Nomine pæne*, or other Thing demandable, issues or goes out of. See *Hob.* 207, 208. For that is the most proper Place to make such a Demand, because the Rent, and *Nomine pæne*, partakes of the Nature of the Land out of which they Issue; yet the Parties, by their Agreement, may direct the Demand to be made elsewhere.

Where a Demand for Rent, or a *Nomine pæne*, must be.

Where Payment off from the Land.

A Man leases two Barns, rendring Rent, with a Clause of Re-entry for Non-payment: If the Tenant be at one of the Barns to pay the Rent, and the Lessor at the other to demand it, and none there to pay it, the Lessor can't enter, there being no Default in the Tenant; he being at one and could not be at both together. *Popham.* 58.

Two Barns are let; Tender of the Rent at one of them is sufficient

Where Lands and Woods are let together, the Rent ought to be demanded at the Land as being the more worthy Thing. Note, Rent ought not to be demanded in any private Place of a Close, as amongst Bushes, or in a Pit, &c. *Poph.* 58.

Where to be demanded, where Lands and Woods are let.

Where to be demanded in a Close.

Where a Rent is made payable at a certain Place off from the Land, there needs no Demand of the Rent upon the Land for the Re-entry, as it is in *Dyer* 68. pl. 24. *Plow. Com.* 71. But I think it advisable, that there be a Demand made at the Place appointed for the Rent to be paid; and so is 4 *Rep.* 73. *Burrough's Case*, where it is resolved, That there must be a Demand made at the Place appointed for the Payment of it; and the contrary Opinion in *Plow.* denied to be Law.

Where the Demand to be, where payable off from the Land.

The Rent upon a Dean and Chapter's Lease was made payable at the Chapter-House; a Demand at the Chapter-House, where it is made payable, and not upon the Land, is sufficient. *Cro. El.* pl. 31, 415. pl. 7. 536.

Rent must be demanded at the Place appointed for the Payment of it, and not upon the Land.

Where there is a Re-entry for Non-payment of Rent upon Lease, the Lessor, or some other Person by his Direction, must go upon the Day of Grace, a little before Sun-set; and if the House be open, enter into it: And if it be not open, then at the Door of the House, or most notorious Place of the Thing demised, say these Words, viz. *I do here demand (not, I come to demand) the Sum of, &c. for half a Year's Rent for this House, and other Things herewith demised to A. B. due at such a Day in such a Month last, and yet unpaid; And after such Demand made, the Party must continue upon the Place, till it is so dark that you cannot distinguish good Money from bad; and if no Body comes to pay the Rent, then the next Day, or some Day after, the Lessor must make his actual Entry. And then he hath avoided the Lease,*

How, where, and when, a Demand of Rent must be made to avoid a Lease.

1 *Plow.* 70, 71.

so that he may bring his Ejectment, or an Action of Trespass. 1 Plow. 172. b. For the Manner of the Entry, see Title Entry. To what Intents the Time of Sun-set is the Time appointed by Law to demand Rent, see 1 Saund. 387. Raym. 418.

When the Demand must be made of Rent to entitle the Lessor to his Entry.

How the Demand must be made.

How it is when the Rent is payable upon Demand any Time within the Year.

Whether a Demand be necessary to entitle to a Distress.

Vide Lutm. 123. In *Hob.* 208, it is said by *Hobart*, That where the Clause is, That if the Rent be behind, being lawfully demanded, then he may distrain; it is no more than the Law speaks, and therefore the Distress implying a Demand and Distress, one before another, by Operation of Law, satisfies it. See also *Hob.* 207.

A Lease for Years is not void, without a Demand of the Rent.

But in Case of the King it is void without Office.

A Demand must be made for a Penalty or Forfeiture.

There must be a Demand to make a Forfeiture.

An exact Sum, and when due, must be made before there can be Re-entry.

of, and when due, the Demand is not good. 1 Leon. Case 425.

Rent is made payable at *Michaelmas* and *Lady-Day*; it is arrear at *Lady-Day*, and not then demanded; it cannot be demanded at *Michaelmas* to entitle the Lessor to his Entry, for Rent unpaid at *Lady-Day*. *Cro. El.* 73. pl. 30.

To demand all the Rent then due is not good, for he ought precisely to shew upon his Demand, what Rent he demands, and for what time he demanded it. *Cro. El.* 209. pl. 5.

A Lease is made reserving a Rent, and if it be not paid at any time within the Year upon Demand, the Lease to be void; if the Lessor demand it upon the Land any time but the last Day of the Year, the Lessee not being there, it is a void Demand: But his Way is to appoint the Lessee, that such a Day he will come upon the Land and demand his Rent, and then if the Lessee be not there to pay it when demanded, it's a Forfeiture of his Lease.

When Rent is to be paid at *Michaelmas*, or twenty Days after, and a Clause of Distress for Non-payment being lawfully demanded, Whether a Demand is necessary to entitle the Party to a Distress.

A Lease for Years, with Condition to be void for Non-payment of Rent, is not void, unless the Rent be demanded, and an Entry made. *Hob.* 67, 331.

But where the King makes such a Lease and the Rent is behind, the Lease is void without Office. 2 Leon. Case 178, and Case 256, to 206.

No Advantage can be taken of Penalties or Forfeitures, without a Demand upon the Day prefix'd. *Hob.* 207.

The Forfeiture of a Lease for Years for Nonpayment of Rent cannot be taken Advantage of without a Demand made of the Rent. 331.

If a Lessor in a Demand of Rent in Order for a Re-entry, demands one Penny more or less than is due, or in his Demand doth not shew the Certainty of the Rent and the Day of Payment thereof,

Demand.

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Rent payable half yearly, or within six Days after each Feast; a Demand the last Instant of the sixth Day for Rent due is a good Demand. *Cro. Jac. 94. pl. 6.*

Reserved at Michaelmas or 6 Days after, a Demand of Rent then due upon the last Instant of the sixth Day, is good.

Demurrer.

See Abatement.

Demurrer is when any Action is brought, and the Defendant saith, That the Plaintiff's Declaration is not sufficient for him to answer to: Or when the Defendant pleads, and the Plaintiff says, That it is not a sufficient Plea in Law; and the Defendant says, That it is a good Plea; and thereupon both Parties submit to the Judgment of the Court: And this is a Morator in Lege.

What a Demurrer is.

If a Demurrer be entred, it cannot be waved, except both the Plaintiff and Defendant do consent unto it. *Mich. 22 Car. B. R.* Nor then without Leave of the Court; because by the Demurrer both Parties have submitted the Matters in Law in Question betwixt them to the Judgment of the Court.

After a Demurrer is entred, it cannot be waved without the Consent of both Parties.

A Demurrer may be upon a general Plea, Replication, Rejoinder, &c. as well as upon a special Plea. *Mich. 23 Car. B. R.* For all Parts of a Pleading to Issue ought to be according to the Rules of Law; and if any part fail, the whole is naught, and may therefore be demurred unto.

It may be upon a general Plea, &c. as well as upon a special one.

Where a Plea or Replication concludes to Issue to the Country, there if the Plaintiff or Defendant demurs after the Words, *Et de hoc ponit se super patriam*, or *Et hoc petit quod inquiratur per patriam*; the Words *Et præd'* the Plaintiff or Defendant, as the Case is, *similiter*, &c. must be struck out; for those are the Words which join the Issue in Fact, and when there comes a Demurrer afterwards, that is an Issue in Law.

What must be done if a Plea concludes to Issue and either Party demurs afterwards.

If the Court doth perceive that a Demurrer is put in only to put off a Trial, or for delaying of the Proceedings, upon a Motion that the Defendant may plead as he will stand to it; the Court oftentimes makes a Rule to plead *in Crastino*, as he will stand to it.

If a Demurrer be put in only to put off a Trial, the Court will upon Motion order the Defendant to plead *in Crastino*.

Demurrer.

Matters of Form not to be insisted on, unless specially assign'd.

When the Defendant may demur upon the *Venire facias*. But if he do not the Trial is good.

dy of the County, the Defendant may demur upon the *Venire facias*, if he will; but if he do not demur, but suffer the Trial to pass, this is a good Trial. *Mich. 22 Car. B. R.* For he had slipped his Advantage of Demurrer; and here is a fair Trial, and a Verdict given upon the Oaths of twelve lawful Men who heard the Evidence, and shall be intended to have well understood the Matter of Fact in question betwixt the Parties: But since by a Statute made in the Reign of King *Charles II.* this is aided, and all Trials are good which are tried by a Jury of the proper County.

Where a Stat. gives Leave to plead generally and the Party pleads specially, the other Party may demur upon his special Plea, if it be ill pleaded.

barred of taking that Advantage of Exception to the Plea, which the Law doth give him if it be not a good Plea.

Special Pleadings and Demurrers to be sign'd by Counsel.

Where a Statute gives Leave to plead generally, and the Party waves this Leave, and pleads specially, the other Party may demur upon his special Plea if it be not well pleaded. *Pasch. 23 Car. B. R.* For though he needed not to have pleaded specially, yet having done it, the Plea must be good at his own Peril; and the Party is not to be barred of taking that Advantage of Exception to the Plea, which the Law doth give him if it be not a good Plea.

per Cur. Pasch. 16 Car. 2.

If the Proceedings be delayed by a Demurrer, the Court on Motion will appoint a short Day for Counsel to speak to it.

No special Pleadings or Demurrers in Law, in any Cause here in Court now depending, or hereafter to be prosecuted, shall be received by the Clerks of the Papers of this Court before such Pleas or Demurrers in Law shall be signed by the Hand of some Counsellor for that Purpose retained: And it is further ordered, That the Clerks of the Papers of this Court, in all Copies of Pleas and Paper-Books by them to be made up, shall subscribe to such Copies of Pleas and Paper-Books, the Names of the Counsel who have signed such Pleas as well on the Behalf of the Plaintiff as of the Defendant; and that in all Books delivered to the Judges of this Court, the Names of the Counsellors who did sign those Pleas as well on the Behalf of the Plaintiff as the Defendant, shall be subscribed in those Books by the Clerks or Attorneys who shall deliver the same.

The Party that is delayed in his Proceedings by reason of a Demurrer, may move the Court to appoint a short Day after to hear Counsel speak to the Demurrer, and the Court will grant it. *Trin. 23 Car. B. R.* For the Court *ex Officio* is bound to further the Proceedings in Law depending before them as much as conveniently may be.

Demurrer.

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In a Demurrer upon an Evidence, the Party demurred unto, may demand Judgment of the Court, whether he ought to join in the Demurrer or no. *Trin. 23 Car. B. R.* For if there be not a colourable Matter for to ground the Demurrer upon, the Court will not force the Party to join in it, but will over-rule it, that Justice may not be frivolously delayed.

In Demurrer on Evidence, the Party demur'd to, may demand Judgment, whether he ought to join in Demurrer, or no.

It was said by *Glyn* Chief Justice, 1658. upon a Demurrer in Trespass and Ejectment between *Baspole* and *Newton*, that he that demurs, confesseth thereby all the Matters in Fact alledged by the other Party that are well pleaded, but he doth not thereby admit of the Errors in pleading.

He that demurs, confesses the Matters well pleaded, but does not admit the Errors in pleading.

That as a Demurrer at Common Law did confess all Matters formally pleaded; so now by the Statute of 27 *Eliz.* a general Demurrer doth confess all Matters pleaded though unformally, according to the Forms meant by this Law; for such Forms are not now material, not being expressed in the Demurrer. *Hob. 233.*

A general Demurrer confesses all Matters pleaded, though unformally.

After the Plaintiff and Defendant have joined in the Issue which is to be tried betwixt them, neither of them can demur without the Consent of the other. *Trin. 23 Car. B. R.* For by their joining in the Issue, both Parties have admitted the whole Pleading to be good as to try the Issue, and therefore it is too late then to demur.

After Issue joined neither Party can demur without Consent of the other.

But afterwards there may be a Repleader if the Court see Cause.

But there may be a Repleader.

There must be a special Demurrer to a Negative pregnant, that is, a negative Plea which doth also contain in it an Affirmative, and to an argumentative Plea, that is, a Plea which concludes nothing directly, but only by way of Argument or Reasoning, and to a double Plea for a general Demurrer doth admit them to be good. *Mich. 23 Car. B. R.* For it doth not shew any Fault in them, as a special Demurrer doth; and the Court will intend every Pleading to be good till the contrary doth appear.

There must be a special Demurrer to a Negative pregnant and to a double Plea.

The Statute of 27 *Eliz.* doth not utterly reject Form, for that were a Dishonour to the Law, and to make it in Effect no Art; but it requires only that it be discovered and not used as a Snare to intrap, and that Discovery must not be confused and obscure, but special; therefore it is not sufficient to say that the Demurrer is for Form, but it must be express'd in what Particular. *Hob. 232.*

Demurrer for Form is not sufficient, unless it say in what Particular.

This Statute of 27 *Eliz.* divides it self into two main Member.

The two main Parts of the Statute of 27 Eliz.

1. Want or Imperfection of Form.
2. The Matter of Law or very Right, viz. The true, meer, or very Right; to which must be added that which the Statute adds, viz. That

this Right, according to which Judgment is to be given, must appear in the Body of the Record. *Ibid.*

Doubleness of Demurrer, Cause of Demurrer to it.

One may demur to a Demurrer for the Doubleness of it; for a Demurrer ought to have Formality and Certainty in it to avoid Barbarism, and inveigling of the Court; but if one that might demur, doth not demur to it, but joins in the Demurrer, he cannot demur afterwards, for he hath slipped his Advantage. *Mich. 23 Car. B. R.*

Double Demurrer, what it is.

A Demurrer is double, when he that doth demur, doth assign in his Demurrer, (for cause of it) one Error in Fact, and another Error in Law, to be in the Plea upon which he demurs, which he ought not to do in one Demurrer. *Mich. 23 Car. B. R.* For if either of the Causes of Demurrer be true, is enough to overthrow the Plea; and it is at his Liberty to insist upon that which is best for his own Advantage, but not upon both, for this were to puzzle the Proceedings.

One may demur to Part of a Declaration, and plead to other Parts.

One may demur to one Part of a Declaration, and yet plead to the other Part of it with a *Quod, &c.* *Mich. 23 Car. B. R.* For this is but to admit of what is well pleaded, and to deny the rest.

One ought to demur to an insufficient Declaration or Plea.

The Judgment of the Court ought not to be prayed upon an insufficient Declaration or Plea, but you must demur to it, and then the Matter comes judicially before the Court. *Sir William Ruffel's Case. Trin. 24 Car.*

What Matters of Fact are confess'd by a general Demurrer.

All Matters of Fact well and sufficiently alledged, and none else, are by a general Demurrer confess'd to be true. *1 Leon. 80.*

How it is where the Declaration is good, and the Bar ill; and the Replication is only to avoid the Bar.

Where the Bar is ill, and the Declaration good; and the Replication is only to avoid the Bar which need not be avoided, because it is no Bar, and the Replication is not to entitle him to the Action; tho' the Replication be ill, yet Judgment shall be given against the Defendant. But where the Replication is to entitle the Plaintiff to the Action, and the Plaintiff by his own shewing in his Replication, hath no Cause of Action, Judgment shall be for the Defendant, though the Bar be ill. *Cro. Jac. 132, 133.*

How where the Plaintiff by his Replication shews that he hath no Cause of Action.

Where Judgment shall be given upon a Demurrer, either for Plaintiff or Defendant, there shall be Costs.

If any Person shall commence or prosecute in any Court of Record, any Action, Plaint or Suit, wherein upon a Demurrer, either by Plaintiff or Defendant, Judgment shall be given by the Court against such Plaintiff, the Defendant shall have Judgment to recover his Costs, and shall have an Execution for the same. *Stat. 8 & 9 W. 3. cap. 10.*

8 & 9 W. 3. cap. 10.

There can be no Demurrer where the Issue is perfect; but only where there is something to come afterwards.

The Defendant pleads *Nul tiel Record* to a *Scire Facias*. The Plaintiff replies, *Quod tale habetur Recordum*. The Defendant demurs. *Curia*. He hath no Time to demur, because the Issue is perfect: But if the Defendant had been to come and say *Similiter*,

Similiter, &c. as in an Issue in Fact; there upon striking out of the Word *Similiter, &c.* the Demurrer would have been admitted, but here it cannot.

Where there is a Demurrer to a Plea in Abatement, you shall not take any Advantage of a Fault in the Declaration: But upon the *Respondas Ouster*, the Defendant may demur to the Declaration, if he pleaseth. 6 W. & M.

No Advantage to be taken to a Fault in a Declaration, on a Demurrer to a Plea in Abatement.

Where the Conclusion of the Demurrer is in Abatement, and the Commencement in Bar, the Judgment shall be peremptory. 1 Lev. 312.

Where the Conclusion of the Demurrer is in Abatement, and the Commencement in Bar, the Judgment shall be peremptory.

Where there is an Issue to Part of the Defendant's Plea, and a Demurrer to other Part of it, the Plaintiff may either before or after Judgment given upon the Demurrer try the Issue; but if it be before Judgment, then the awarding of the *Venue* must be as followeth: *Et quoad tam triandum exitum inter partes præd. superius junct. per patriam triand. quam ad inquirend. quæ dampna præd. quer. sustinuit occasione transgr. præd. unde partes præd. in judicium Cur. se posuer. si contingat judicium pro præd. quer. versus præd. def. Redd. Ven. inde Jur. coram Domino Rege apud Westm. die, &c. Vid. 1 Saund. 80.*

How it is where there is a Demurrer to Part, and an Issue to other Part.

To enquire of Damages.

Si contingit.

The Causes of Demurrer ought to be specially shewn, and not generally with *Duplex, &c.*

By the Statute of 27 Eliz. cap. 5. and Rules of this Court: And now by the Stat. of 4 & 5 Anne, For the Amendment of the Law: The Causes of Demurrer ought to be specially shewn, and not the general Expressions of *Caret forma*, or *duplex & incertum*, or that it is a Negative pregnant: But he that demurs, must shew specially and particularly for what he demurs, otherwise no Advantage shall be taken of such Defects or Imperfections. *Lutw. 4. Lev. 132, 190, 196.* See *Postea* in this Title: And also how Judgment shall be given upon Demurrers.

Demurrer for double Pleading.

How to be shewn in what it is double.

Where a Man pleads a Lease for a Year, and a Release and Confirmation, the Plaintiff demurs generally, and shews for Cause that it was double. *Curia.* So it is if you had demurred as you ought to have done: For you ought to have shewn in what it was double, *viz.* by pleading both a Release and Confirmation, when either of them would have done. But as the Demurrer was general for Duplicity, and saying no more, it shall extend no farther than to a general Demurrer. *Pasch. 13 W. B. R.*

A Demurrer to a Writ.

A Demurrer may be to a Writ after Oyer and Entry of Record. *Lutw. 1644.*

How the Judges shall proceed to give Judgment upon a Demurrer. 4 & 5 Anne.

By the Act For the Amendment of the Law, 4 & 5 Anne, it is enacted, That where any Demurrer shall be joined and entred in any Suit in any Court of Record, the Judges shall proceed and give

Judgment,

Without Regard to any Defect in any Declaration.

Judgment, according as the very Right of the Cause and Matter in Law shall appear to them, without regarding any Imperfection, Omission or Defect in any Writ, Return, Plaint, Declaration, Pleading, Process, or Course of Proceeding whatsoever, except those only which the Party demurring shall particularly and specially set down, and express, together with his Demurrer, as Causes of the same: Notwithstanding that such Imperfection, Omission or Defect, might have heretofore been taken to be Matter of Substance, not aided by the Statute of 27 El.

Except those particularly shewn for Causes.

Notwithstanding it might have been Substance, not aided by the Statute of 27 Eliz.

In what other Matters no Advantage shall be taken:

As immaterial Traverse.

Default of Pledges. For not bringing the Bond into Court.

Or Letters Testamentary:

Or of Administration:

Or Omission of *Vi & Armis*:

Or of *contra Pacem*:

Or of *hoc Paratus est verificare*:

Or of *huc paratus est verificare per Recordum*:

Or of *prout patet per Recordum*.

4 & 5 Ann. c. 2.

5 Eliz. cap. 4.

Demurrer to a Writ of Affize, and Return of it.

Respond. Ouster.

There ought to be a several Demurrer to each Plea.

habet, &c. Et per Cur. The Demurrer ought to have been several upon each Plea by it self. 1 Leon. 139. Case 190.

That no Advantage or Exception shall be taken to or for any immaterial Traverse, or of or for the Default of entering of Pledges upon any Bill or Declaration; or for the not alledging of the bringing into Court of any Bond, Bill, Indenture, or other Deed mentioned in the Declaration, or other Pleadings; or for the not alledging of the bringing into Court of Letters Testamentary, or of Administration; or the Omission of *Vi & Armis*, and *contra Pacem*, or either of them; or for want of Averment of *Et hoc Paratus est verificare*, or *hoc Paratus est verificare per Recordum*; or for want of *prout patet per Recordum*. But that the Court shall give Judgment according to the very Right of the Cause as aforesaid, without regarding any such Imperfections, Omissions and Defects, or any other Matter of the like Nature, except particularly set down and shewn for Cause of Demurrer. Stat. 4 & 5 Anne.

Note, This Statute comprehends all that is in the Statute of 27 Eliz. cap. 5. and makes several further Provisions.

A Demurrer to a Writ of Affize, and the Return of it. 1 Plow. 73. b. and a *Respond. Ouster* awarded. *Ib.* 77. a.

In a *Quare Impedit* the Patron pleaded one Plea, and the Incumbent the same Plea by himself. The Queen demurred thus, *Quoad separalia placita per Def. separaliter placitat. dicta Domina Regina necesse non*

habet, &c. Et per Cur. The Demurrer ought to have been several upon each Plea by it self. 1 Leon. 139. Case 190.

Demurrer to Evidence.

A Demurrer to an Evidence is when the Party that doth demur upon it, demands the Judgment of the Court, whether the Matter given in Evidence be sufficient, admitting it to be all true, to find a Verdict for the Plaintiff upon the Issue that is joined betwixt him and the Defendant.

Demurrer to Evidence, what.

When a Demurrer to Evidence is taken, the Plaintiff and the Defendant must agree the Matter of Fact in Dispute betwixt them; otherwise the Court cannot proceed to determine the Matter in Law, but there must be a *Venire de novo* to try it. *Trin. 23 Car. 1. B. R.*

The Plaintiff and Defendant must agree the Matter of Fact.

Upon a Demurrer to an Evidence given to a Jury at the Trial, the Jury are to be discharged, and not to pass upon the Trial; but the Matter in Law in Question upon the Demurrer is referred to the Judges to determine. *Pasch. 13 Car. 1. B. R.*

The Jury are to be discharged, and the Matter of Law is referred to the Judges.

If the Plaintiff produce Evidence to prove any Matter of Fact upon which a Question in Law arises, if the Defendant admits the Testimony to be true, he may demur thereupon: Because Matters of Law shall not be put into the Mouths of Lay-Gents. *5 Rep. 104.* So also the Plaintiff may demur upon the Defendant's Evidence, *mutatis mutandis. Ib.*

Demurrer to Evidence by Plaintiff and Defendant.

When the Demurrer to the Evidence is determined, there shall go a Writ of Enquiry of Damages. *Cro. Car. 143. pl. 21.*

A Writ of Enquiry shall go upon the Judgment upon a Demurrer to Evidence.

Where the Plaintiff gives Matter of Writing or Record in Evidence, and the Defendant offers to demur to it, the Plaintiff ought to join in Demurrer or wave the Evidence. So if the Plaintiff produces Witnesses to prove Matter of Fact, whereupon a Question in Law arises, if the Defendant admits their Evidence to be true, there also the Defendant may demur in Law to it: But then he must admit the Evidence given for the Plaintiff to be true. *5 Co. 104. a. See Cro. El. 751, 752. Aleyn 18.*

Where there may be a Demurrer to Evidence.

It must be upon a Question in Law arising.

The Evidence must be admitted to be true.

Denizen.

See Alien.

A Denizen, who.

Denizen is where an Alien born becometh the King's Subject, and obtaineth Letters Patents to enjoy all Privileges as an Englishman; but if one be made Denizen, he shall pay Aliens Customs, and divers other Things as Aliens.

A Devise of Land to a Denizen.

Lands may be devised to one made Denizen by Patent. 5 Rep. 52. a. b. 11 Rep. 67. b.

A Denizen by Patent may purchase Lands, but cannot inherit.

An Alien that is made Denizen by the King's Letters Patents, is thereby enabled to purchase Lands, but cannot thereby inherit the Lands of his Ancestors: But he may as a Purchaser enjoy the Lands of his Ancestors. 11 Rep. 67. b. Co. Litt. 8. a. Cro. Jac. 359. pl. 7.

The Issue born after Denization shall inherit, not those born before.

If a Man be made a Denizen, the Issue which he hath afterwards shall inherit; but those which he had before, shall not. Co. Litt. 8. But otherwise in case of Naturalizations. Ibid. and 129.

An Issue of an Englishman naturalized shall inherit to his Father; but if denizen'd, not.

If an Issue of an Englishman be born beyond Sea, and be naturalized by Act of Parliament, he shall inherit his Father's Lands; but if he be made Denizen by Patent, he shall not. Co. Litt. 129. a.

What Son of a Denizen shall inherit, and what not.

An Alien hath Issue a Son, and afterwards is made a Denizen, and then he hath another Son; here the youngest Son, and not the eldest, shall inherit. Vaugh. 285. Cro. Jac. 539. pl. 7.

Deodand.

See Felo de se.

What a Deodand is.

A Deodand is when any Man kills himself, or is by Misfortune slain by an Horse, Cart, or any other thing that moveth to his Death; then the Thing which is the Cause of, or moved to his Death, shall be forfeited to the King or Grantee of the Crown: But the Almoner disposes of what belongs to the King.

Deodands were the Goods and Chattels of a *Felo de se*; that is, of him that kills himself, or is killed by any Accident; and upon Inquisition thereof found before the Coroner, they do belong to the King, or to the Lords of the Manors, who have the Grants thereof enrolled in the Crown-Office. But as to those which belong to the King, he appoints his Chief Almoner to dispose of to the Poor, or to be employed in other pious Uses. And a Discharge given for them by the Almoner or his Deputy, or such Lord of a Manor, to any Person that hath such Goods of a *Felo de se* in his Possession, is a good Discharge in Law for them: But a Discharge given for them by an Under-Deputy, is no good Discharge; for he is no such Officer as the Law takes Notice of.

What are Deodands, and to whom they belong.

The Original of Deodands came from the Notion of Purgatory: For when a Person came to a sudden and untimely Death, without having time to be shrived by a Priest, and to have the Extream Unction administered to him, the Thing which had been the Occasion of his Death became a Deodand, that is, it was given to the Church, to be distributed in Charity to the Beadsmen, to pray the Soul of such deceased Person out of Purgatory.

The Original of Deodands.

Any Thing that is fixed to the Freehold cannot be forfeited as a Deodand. *Per Cur. 16 Car. 2. B. R. The King against Cross and Cabin.*

By an Act made 4 & 5 W. & M. cap. 22. Sect. 1, 3. entitled, *An Act for regulating of Proceedings in the Crown-Office of the Court of King's Bench*; it is enacted, That all Persons who have Grants of Deodands inrolled, and had the same allowed, shall plead the same to any Inquisition returned by the Coroner.

All Persons who have Grants of Deodands, may plead the same.

4 & 5 W. & M. cap. 22. sect. 1, 3.

Also, any Corporation or Person, who now have, or shall have, such Grant from the Crown, of Deodands, Felons Goods, and other Forfeitures, need not to inroll more of them, than to express the Grant of such Goods, for which he shall pay 20 s. after such Inrollment, no such Grantee shall be compelled to plead the same in the said Court to any Inquisition.

How those Grants to be inrolled, and what Fees to be paid for them.

and set forth the Grant and no more; and

The Fees for the Inrollment.

That if, after such Inrollment or Entry, Process shall issue against such Grantee of Deodands, Felons Goods, and other Forfeitures, he shall forfeit and pay to the Party grieved 5 l. to be recovered in any of the Courts of Westminster, by Bill, Plaint or Information.

The Penalty of suing out of Process against any Grantee afterwards.

Also, the Clerk of the Crown shall not incur any Penalty for issuing out of Process against any Person who shall not upon every Purchase or Devise inroll and plead the same; nor against the Heir, who shall not inroll his Right by Descent.

Where the Clerk of the Crown may sue out Process.

How *Bona & Catalla Felonum de se* pass.

Where the Horses of Men drowned are not Deodands.

Deodand.

Bona & Catalla Felonum de se do not pass by a Grant from the King of *Bona & Catalla Felonum* only. *Sutton's Case*, 1 *Saund.* 274.

Two Men riding over the River Trent, were drowned by the Violence of the Water. Adjudged that their Horses are not Deodands. *Cro. Jac.* 483. pl. 18.

Departure.

A Departure, what.

Deporture is where a Man pleads a Plea in Bar, and the Plaintiff replies to it, and he after in his Rejoinder pleads or sheweth another Matter contrary, or not pursuant to his first Plea: This is called a Departure from his Bar; (*Mich.* 24. *Car.* 1. B. R.) and is as much as to deny what he formerly admitted, which is to say and unsay, and is naught for the Uncertainty, because an Issue cannot be joined upon it.

In Covenant Defendant pleads Performance, and then rejoins, The Plaintiff ousted him; it is a Departure.

Where the Defendant shall take no Advantage of the Plaintiff's Departure.

Defendant cannot, after *nul fecer' Arbitrium*, plead that the Award is void.

No such Award pleaded; the Award is set forth, and a Joinder, That it was not tendred; this is a Departure.

Defendant, after his Plea of *Liberum Tenementum*, pleads Tender of Amends; it is naught:

But he may plead it after a new Assignment.

If in Covenant the Defendant pleads Performance, and after rejoins that the Plaintiff ousted him, it is a Departure. *Raym.* 22.

The Plaintiff in his Replication departs from his Count, the Defendant takes Issue upon it, and it is found for the Plaintiff; the Defendant shall take no Advantage of that Departure; otherwise if he had demurred upon it. *Raym.* 86.

After *nullum fecerunt Arbitrium*, the Defendant cannot plead that the Award is void: Because that is a Departure from his former Plea. 1 *Lev.* 133.

Mistake Award pleaded; the Award is set forth, and a Joinder, That it was not tendred: This is a Departure. 1 *Lev.* 300. *Lutw.* 385.

The Defendant in his Bar pleads, that it is his Freehold; and after, in his Rejoinder, pleads Tender of Amends: Which is a Departure, and therefore naught. *Lutw.* 1262. But after a new Assignment, a Tender may be pleaded. *Ibid.*

For Departure in Pleading, See 2 *Lev.* 67.

Depositions.

See Evidence.

Depositions taken in a Cause depending in Chancery, tho' the Cause be there determin'd or dismissed, may be given in Evidence at a Trial at the Bar, in a Suit depending here touching the same Matter between the same Parties that sued in the Chancery, if the Party that deposed to the Interrogatories be dead at the Time of the Trial; else not. But those Witnesses, if living, must appear in Person in the Court, and be examined *viva voce* in the Cause; and so it is of Depositions taken in any other Court. *Mich. 24. Car. 1. B. R.* For the fairest way of Examination of Witnesses is the open Examination of them in Court, that all Parties concerned may hear them examined, and have Liberty to cross-examine them.

Depositions taken in Chancery, may be read in Evidence here, if the Witnesses be dead; otherwise not.

To the Allowance of Depositions as Evidence at Law, a Copy of the Bill and Answer, regularly, must first be proved; but where a Bill is preferred to have Witnesses examined *in perpetuum rei memoriam*, and before Answer a Commission issues to examine *de bene esse*, and the Defendant joins in the Commission, and the Witnesses die before Answer, and before they be examined, *Quare* if these Depositions are Evidence.

What is requisite to the Allowance of such Depositions as Evidence at Law.

Where Witnesses are going to Sea, or long Journeys, the Court upon Motion will give Leave to examine them at a Judge's Chamber, upon Interrogatories, in the Presence of the Attorneys for the Plaintiff and Defendant; which Depositions shall be admitted to be good Evidence at the Trial.

Where the Depositions of Witnesses taken at a Judge's Chamber, shall be admitted as Evidence at the Trial.

Deputy.

A Deputy is he that occupieth in another Man's Right, whether it be an Office, or any other Thing; and his Forfeiture or Misdemeanor shall cause him, whose Deputy he is, to lose his Office or other Thing.

What a Deputy is.

The Common Law takes no Notice of Under-Deputies.

The Common Law in many Cases takes Notice of Deputies, but it never takes Notice of Under-Deputies; For a Deputy is but a Person authorized, who cannot authorize another. *Trin. 23 Car. 1. B. R.* As of the Under-Sheriff, who is but the Sheriff's Deputy, Sub-Almoner, or Deputy-Almoner; For in many Cases an Officer may by Law make

One Deputy cannot depute another.

a Deputy; but a Deputy hath no Power to depute another under him: For by the same Reason the Deputy of a Deputy might make a Deputy, & sic in infinitum, which would be very mischievous.

The King may make a Deputy-Escheator.

The King by his special Commission, not an Escheator, may make Deputy-Escheators, to find an Office after the Death of an honourable Person; *Pasch. 24 Car. B. R.* as of a Duke, Marquess, Earl, Viscount, Baron, &c. *Quere* if in some special Cases he may not do it after the Death of one that is not of the Nobility: It seems he may; and there is no Prejudice to any by doing it.

A Coroner cannot make a Deputy.

A Coroner cannot make a Deputy, it being a judicial Office.

Any Clerk of the Sheriff may return a *Tales*.

A Clerk of the Sheriff's Appointment is so to return a *Tales*, &c. *Hob. 357. pl. 48. &c.*

A Bailiff of a Liberty may have a Deputy.

A Bailiff of a Liberty may have a Deputy. *Cro. Jac. 242.*

Where a Deputy may make a Deputy.

A Deputy-Steward of a Court-Baron made a Deputy to take a Surrender to the Use of a Will, and held good upon a Case made at the Assizes in Norfolk, upon an Ejectment in the King's Bench, *inter Barker & Ket. 12 Will. B. R. Cro. El. 534.*

Mandamus lies for him who hath Power to make a Deputy:

Altho' a *Mandamus* lies not for a Deputy, it lies for him who has Power to make a Deputy, to have his Deputy admitted or restored; for otherwise he will be deprived of his Power to make a Deputy.

But not for a Deputy.

1 Lev. 306.

Deputy of an Office, what Estate he hath therein.

A Deputy of an Office hath no Interest in the Office, but doth all Things in his Master's Name; and his Master is answerable for him. *9 Rep. 48. b.*

De Son Tort, See De Injuria sua propria.
Detinue, See Judgment.

Debañabit.

Devastavit.

Sec. 1 Administravit. 2 Executor.

A Devastavit is the wasting of Goods by Executors or Administrators, in not paying of Debts upon Judgments and Statutes before Debts upon Bond and Simple Contracts; or keeping of the Goods in their Hands, and not paying of the Debts; or selling of them, and not paying of Debts.

What is a Devastavit.

An Executor shall be charged in the *Debet & Detinet* in an Action upon a *Devastavit*, where the Action is brought upon a Judgment. But it will not lie where the Action is upon a Bond: Because the Court will not extend it farther than to a Judgment. 1 Lev. 147. 2 Lev. 145. See Carter, Fol. 2.

Executor shall be charged in the *Debet & Detinet* in a *Devastavit*.

It will not lie, but upon Judgment on Bond.

An Executor shall be charged in the *Debet & Detinet* for a *Devastavit*, upon a Judgment recovered against him as Executor. 1 Lev. 255.

So where a Judgment is recovered against him as Executor.

An Executor wastes Goods, and dies, and leaves an Executor and Affets, his Executor shall be chargeable. Chanc. Rep. 257.

Executor of an Executor, where chargeable.

An Executor compounds an Action of Trover for the Testator's Goods, for a Sum of Money to be paid in *Futuro*. This is a *Devastavit* presently: For he by Acceptance of a new Security, hath converted them to his own Use; and is *quasi* a Sale of them, and Affets presently, although the Money is payable for them in *Futuro*. 2 Lev. 189, 190.

Where an Executor compounds, it is a *Devastavit*.

The Husband shall not be charged after the Death of his Wife Executrix, with a Suggestion of a *Devastavit* in a Declaration against him. Lutw. 672.

The Husband not to be charged with a *Devastavit* after the Death of a Feme Executrix.

Executor *de son Tort* wastes the Goods, and leaves Affets; his Executor or Administrator shall be charged, 2 Lev. 133. by the Stat. of 30 Car. 2 cap. 7.

Executor *de son Tort* commits a *Devastavit*, and dies. 30 Car. 2. cap. 7.

Executor pays Debts upon Simple Contracts, before Notice of Bonds; this is no *Devastavit*: But per Levinz, It shall be only where the Executor pays Debts of equal Nature after the Writ brought, and before Notice. 3 Lev. 114.

Executor pays Debts upon simple Contracts, before Notice of Bonds.

where

Devastavit.

Where the Husband shall be charged for his Wife's *Devastavit*;

tho' during her Widowhood.

A Feme Executrix shall be liable to a *Devastavit* of her Husband.

Legacies are paid and afterwards a Covenant is broke; the Defendant ought to have taken Security to indemnifie upon delivering the Legacies.

Court inclined for the Plaintiff; because the Defendant should have taken Security to save him harmless when he delivered the Legacies. *Aleyn* 38, 39, 40, 41.

Where the Husband shall be charged for the *Devastavit* of his Wife who was an Executrix. See *Cro. Car.* 519, 526. and in Title *Baron and Feme*, and in *Cro. Car.* 603. pl. 7. Where the Feme was an Administratrix, and it was found that she had wasted the Goods during her Widowhood; and adjudg'd a *Devastavit* in both.

A Feme Executrix takes Husband who wastes the Estate and dies, a *Devastavit* lies against the Wife after the Husband's Death for the Waste of the Husband. *Chanc. R.* 81.

A Man enters into a Covenant, and makes his Will, and gives several specifick Legacies and dies; the Executrix delivers them to the Legatees; six Years after the Covenant is broken, and to an Action brought upon it *plene administravit* is pleaded. The

Defendant should have taken Security to save him harmless when he delivered the Legacies.

Devise.

See { Assets.
Assent.
Executors.
Heir.
Lease.

{ Limitation.
Partition.
Remainder.
Wills.

What a Devise is.

What a Bequest is.

A Devise properly is where a Man gives away his Lands by his Will. And a Bequest is properly where a Man gives away his Goods by his Will.

How Words in a Will are construed to operate.

Insensible and repugnant Words are void.

Rules to be observed in the Construction of Wills.

The Words in Wills are always construed to operate according to the Intention of the Parties as near as can be collected; but Words that are insensible and repugnant are void. *Hob.* 34.

These Rules are always observed in the construction of Wills, viz.

1. The Intent of the Devisor must be observed.
 2. The Intent of the Will according to Law.
 3. The Scope of the Will.
 4. To be so interpreted that every Word may have its Effect.
- Roll. 1 Rep. fol. 318.*

A Devise of the Profits of Lands for Years, is a Devise of the Lands themselves, for so many Years as the Profits are devised. *Trin. 24 Car. B. R.* For except he have the Lands, he cannot come to take the Profits.

A Devise of the Profits of Lands for Years is a Devise of the Lands for the same Term.

If a Man devises his Lands to his Children without saying more; this is but a Devise for Life. *36 El. B. R.* In *Dicken's* and *Marshal's* Case adjudged, *Hill. 23 Car. B. R.* Because there is no Estate limited, but what the Law doth limit, which cannot be intended greater than for Life.

Devise to his Children is but a Devise for Life.

A. devises that B. shall be Heir, or shall have all my Inheritance if the Law will bear it; in both these Cases a Fee passeth. *Hob. fol. 2. 75.* So a Devise to a Man and his Successors shall pass a Fee. *Roll. 1 Rep. 398.*

Devise that B. shall be his Heir, or of all his Inheritance, a Fee passes.

Where the latter Part of the Will doth manifestly contradict the first part of the Will, the latter Part shall stand, and not the first, because that is the Devisor's last Will.

If the last Part of a Will contradict the former, the last shall stand.

A Devise to any one of a Thing which the Law would have cast upon him, although it had not been devised unto him, is a void Devise; as a Devise to the Devisee's Son and Heir in Fee, is a void Devise; for the Law shall adjudge him to be in by Descent. *Mich. 24 Car. B. R.* For his Title to it by Law is his ancient and best Title, and the Law will adjudge him to take by that.

Devise of any Thing that the Law gives a Man is a void Devise.

By the Stat. of 32 H. 8 cap. 1. It is Enacted That every Person having, or which shall have any Manors, Lands, Tenements or Hereditaments holden in Socage, or in the Nature of Socage-Tenure, and not having any Manors, Lands, Tenements or Hereditaments holden of the King by Knight's Service, by Socage-Tenure in chief, or of the Nature of Socage Tenure in chief, nor of any other Person by Knight's Service, shall have full Power to give and devise the same as well by his last Will in Writing, or otherwise by any Act lawfully executed.

Power given to make a Will in Writing of Socage Lands.

32 H. 8. cap. 1. Sect. 1.

Devisees ought to be construed according to the Intent of the Devisor, so far as any Certainty with Reason can be collected. 3 *Leon. Case 80*; but no Intent can be taken against Reason and Certainty. 4 *Leon. Case 101.*

How Devisees to be construed.

A Base Fee is not devisable by the Statute. 32 D. 8. cap. 1.

A Son cannot take as Heir to his Father in the Life of his Father.

of the Body of C. for the Son, living the Father, cannot take as Heir to his Father; for no Son can take as Heir to his Father, living the Father. 2 Leon. Case 94.

A Devise of Land to a College by the Head of the House is void; and why.

A Devise of a base Fee to a Son, Remainder to a Stranger.

Money devised to A to be disposed as should be directed by a Note; he makes no Appointment. A. shall have the Money.

The Residue devised to two Executors, one dies, his Administrator shall have a Moiety.

A Legacy of 500 l. given out of such a Bond, the Legacy is still due, tho' the 500 l. be paid to the Testator.

What Legacies are, and what Debts upon simple Contracts are.

alty are of the same Nature with Debts upon Specialties, but differ in Order and Dignity. Aleyn 38, 39.

A Devise of Lands until 200 l. be raised, shall be intended until it may be levied.

What Remedy against the Heir.

The Intent of the Testator is the Expositor of the Will.

Where there must be Notice of a Devise.

Where a Man is seized to him and his Heirs during the Life of another, he hath not such an Estate as he can devise by the Statute. 1 Leon. Case 339. Court divided in it, Cro. El. 804. pl. 5. See in Vaughan.

A Devise to B. in Tail, and for want of such Issue to the Heirs of the Body of C. B. dies without Issue, living C; this is a void Devise to the Heir

of the Body of C. for the Son, living the Father, cannot take as Heir to his Father; for no Son can take as Heir to his Father, living the Father. 2 Leon. Case 94.

A Devise of Lands to a College by the Head of the House is void; because at the Time it should take Effect (viz. his Death) it is without an Head, and consequently an imperfect Body. 4 Leon. Case 346.

A Man seized in Fee devises that after the Death of his Son without Issue, J. S. shall have his Land; here the Son hath a Fee-Simple determinable, and the Remainder is good. 4 Leon. Case 359.

A Sum of Money is given to one to dispose of as the Testator shall appoint by a Note; he makes no Appointment, and dies; this is a good Bequest to the Party. Chanc. Rep. 198.

A Devise of the Residue to two Executors, one dies; the Administrator of him shall have the Moiety as Tenant in Common, and it shall not survive. Chanc. Rep. 238.

A Man by his Will (made without Executor) gives 500 l. which A. B. now owes him upon Bond; this Money is paid him in his Life-time: Adjudged that this Legacy is still due, tho' the Security is altered. Raym. 335.

Legacies are meer Gratuities, for which no Action lies at Common Law, and not taken Notice of by the Law as Duties; but Debts without Specialty

are of the same Nature with Debts upon Specialties, but differ in Order and Dignity. Aleyn 38, 39.

A Devise of Lands until 200 l. be raised, shall be intended until it may be raised. 4 Rep. 81. b. 82. a. And in such Case, if the Heir, or he in Reversion, enter upon the Devisee to such Uses, and keep him out, then he may either have an Action of Trespass, or enter and hold the Land until he hath received the whole Money. 4 Rep. 82.

The Intent of Testators are the Expositors of Devises. Lutw. 763.

Where there must be Notice given of a Devise, otherwise it is no Forfeiture. Lutw. 813.

By an Act made 3 & 4 W. & M. cap. 14. Entitled, *An Act for Relief of Creditors against fraudulent Devises*, it is enacted, That all Wills, Limitations, Dispositions or Appointments, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, or of any Rent, Profit, or Charge out of the same, whereof any Person or Persons at the Time of his, her, or their Decease, shall be seized in Fee-Simple, in Possession, Reversion or Remainder, or have Power to dispose of the same by his, her, or their last Wills or Testaments, to be made after the 25th of March, 1692. shall be deemed and taken (only as against such Creditor who shall have a just Debt, his Heirs, Successors, Executors, Administrators, and Assigns, and every of them) to be fraudulent, and absolutely void; any Pretence, Colour, feigned or presumed Consideration, or any Matter or Thing to the contrary notwithstanding.

Stat. 3 & 4 W. & M. cap. 14. For Relief of Creditors against fraudulent Devises.

Where fraudulent against Creditors who have just Debts.

And every such Creditor shall and may maintain his, her, and their Actions of Debt, upon his her, or their Bonds and Specialties, against the Heir and Heirs at Law of such Obligor, and such Devisee and Devisees, jointly by Vertue of this Act. And such Devisee or Devisees shall be liable and chargeable for a false Plea by him or them pleaded, in the same Manner as any Heir should have been for a false Plea by him pleaded, or for not confessing the Lands or Tenements to him descended. See Title Heir.

How the Creditors may sue.

How chargeable for a false Plea.

Provided, that it shall not extend to any Limitation for raising of Portions for any Child or Children, other than the Heir at Law, in Pursuance of any Marriage-Agreement made before Marriage, or for Payment of any just Debts. See Title Heir. This Act is made perpetual by an Act made

Not to extend to raising Childrens Portions upon any Marriage-Agreement, or Payment of just Debts.

6 & 7 W. cap. 14.

A Devise to a Son and Heir in Fee, being no other than what the Law gave him, is void. *Vaugh.* 271.

A Devise to an Heir, is void.

A Man hath two Sons and a Daughter, and devises 20*l.* apiece to be paid by his Eldest Son (to whom he devised the Land) to his other Son and Daughter; and if he did not pay it, then the other Son and Daughter should have the Land; the Money is not paid, and they entred: And adjudged for them; for the Devise to the Son and his Heirs, being no more than the Law gives him, is void, and is a future Devise to the Son and Daughter, upon the eldest Son's Default of Payment; also this Condition is a Limitation of his Estate, and shall on Default of Payment give it to the Son and Daughter. *Cro. El.* 839.

A Devise to the Eldest Son is void.

To pay 20*l.* and if not paid, the Devisee to enter.

This is a future Devise of the Land to the Legatees.

Also it is a Limitation.

A Man devises to his eldest Son, paying so much yearly; altho' the Annual Profits of the

A Devise to the Eldest Son, paying so much yearly, where it is a Fee.

Land

Land exceed the Money to be paid, yet the Devisee hath a Fee.
3 Rep. 21. 4.

So it is paying so much within a Year.

A Man devises Lands of 4*l.* per Annum, paying 40*s.* to J. S. within a Year after his Death; this is a Fee: For says the Book. *Cro. El.* 205, the Value is not material, and no Book speaks of the Value. see *Cro. El.* 744. pl. 22, 745. 378. pl. 29.

So it is when it is payable out of Land.

A Man devises Legacies to be paid out of his Lands, and devises the Lands to a Nephew; it was adjudged that a Fee passed, notwithstanding that it was argued that nothing but an Estate for Life passed; because no Person was charged with the Payment of the Legacies; but that they should be paid out of the Land. *Jones* 113.

When an Estate Tail.

To a Man and his Heirs for ever, and for want of Issue of his Body the Remainder over; this is an Entail and not a Fee.

To a Man and his Heirs saving the Reversion to the Donor is an Entail. *Litt. Rep.* 4.

A Man devises to his Son and his Heirs for ever; and for Default of Issue of the Body of his Son, then the Remainder over; here only an Estate-tail and not a Fee passes to the Son. 5 *Mod.* 266, 267, 268, 269. See Title Fee-simple. 2 *Keb.* 234. pl. 7. 261. pl. 12. *Litt. Rep.* 4, 5, 6, 7.

Where 100*l.* apiece is to be raised by three Daughters successively for their Portions, one must not delay to do it in prejudice of the other.

Where 100*l.* apiece is to be raised by three Daughters successively for their Portions, Remainder to the Son; if the eldest Daughter suffer the Son to enter for all her Time, and take the Profits, that shall not prejudice her other Sisters. *Cro. El.* 800. pl. 53. See Title Payment.

A Devise to the Son R. for Life, and after to the next Heir male of the Son, and the Heirs males of his Body.

R. has a Son who enfeoffs a Stranger.

1. That R. had but an Estate for Life, and he shall take as a Purchasor. *Cro. El.* 453, 20, for it is devised to him, and the Remainder is to the next Heir male (in the singular Number) of R. and the right Heir male of R. cannot enter for a Forfeiture in the Life of R. for he cannot be Heir so long as R. lives. 1 *Co.* 66. b.

R. has but an Estate for Life.

His Heir apparent cannot enter for the Forfeiture.

2. The Remainder to the right Heir of R. is good, tho' he cannot have a right Heir during his Life; but it suffices if the Remainder vests *eo instante*, that the particular Estate determines.

The contingent Remainder destroyed by the Feoffment.

3. The Remainder was destroyed by the Feoffment of the Tenant for Life; for every contingent Remainder ought to vest either during the particular Estate, or *eo instante* that it determines; for if the particular Estate be ended in Deed, or in Law, before the Contingency happens, the Remainder is void; and here by the Feoffment of

Where the particular Estate determines before the Contingency happens; the Remainder is void.

of R. his Estate for Life was determin'd by Condition in Law, and can never be revived; and at that Time the Son of R. had no Title; for Heir (which was Title) he could not be when R. his Father was living. *1 Co. 67. a.*

By Holt, (Chief Justice) Where Money is devised out of Lands, sure the Devisee may have Debt against the Owner of the Land for the Money, upon the Statute of 32 H. 8. of Wills; for where-ever a Statute enacts any thing, or prohibits any Thing for the Advantage of any Person, he shall have Remedy to recover or have Satisfaction for the Injury done him contrary to Law, by the same Statute. *Mod. Cases 26, 27.*

The Word *Paying* in a Will when to be construed a Condition, and when a Limitation. *3 Rep. 21.*

An Action lies for Money given by Will out of Land.

When the Word *Paying* in a Will is a Condition, and when a Limitation.

Where A. devises Lands to his Brother, to the Intent that with the Profits he shall educate his Son, or out of the Profits of the Land to pay so much to one, and so much to another: This is but for Life, for he is sure no Loss can happen, because it is to be paid out of the Profits; but where the Party may die after Payment, and before Satisfaction received, it is a Fee-Simple: Because the Law intends it for his Benefit, nor for his Damage. *6 Rep. 16. a.*

A Devise of Land paying, &c. where for Life; where in Fee.

A Devise may be to an Use, and be so executed. *Lutw. 823.*

A Devise may be to an Use.

A Man hath Issue a Son and a Daughter; and devises to his Son in Tail, and if he died without Issue then to the next of his Name; the Son died without Issue, the Daughter being married; she shall not have the Land, for she hath lost her Name by Marriage; but it shall go to the next Heir male of the Name; but if she had not been married at her Brother's Death she would have had it. *Cro. El. 532. pl. 64.* See also the same Case as this, but it differed only in being devised to the next of Kin of his Name, and the same Judgment as here; that it went from the married Sister to the next Heir male of the Devisor. *Cro. El. 576. pl. 23.*

A Devise to the next of his Name, a married Daughter shall not have it.

Neither should she if it had been to the next of Kin of his Name.

But if the Use be void, then the Devisee shall have it to his own Use; for every Use implies a Consideration. *1 Leon. Case 362.*

How it is if the Use be void.

A Man seised in Fee, had only two Daughters, and devises all his Lands to one of his Daughters, and her Heirs. The Devisee shall take the whole: For where-ever a Devise is of the whole to an Heir there the Devise is void. But where Part is devised to the Heir, there he shall take the Whole by Purchase. *Hill. 1 Anne B. R.*

A Devise to one Daughter, she takes the whole.

A Man who hath two Daughters being his Heirs, devises his Lands to them and their Heirs, they shall take as Joint-Tenants; for the Devise gives it to them in another Degree than the Common Law would have given it to them. *Cro. El. 431. pl. 36.*

A Devise to his two Daughters being his Heirs, is a Joint-tenancy, and why.

To two jointly and severally, is a Joint-Tenancy.

A Devise to two equally to be divided, what Estate it is.

Tenants until such Division made; but where it is to two and the Heirs of their Bodies equally to be divided between them, by equal Portions; and if one dies the other shall be his Heir; and afterwards one dies, they are Tenants in Common of an Estate-tail at the Com-

Not a Division of the Possession but of the Interest.

A Devise to three, and that the Survivor shall be each other's Heir is a Joint-Tenancy.

A Devise to his Issues, when he had Sons and Daughters; how it shall be.

the other's Legacy; *Cro. El. 742. pl. 19.*

A Devise of Lands forever, is a Fee.

An Administrator of a Term cannot devise it, but an Executor may. But may sell all.

How the Assent of the Executor must be to a Devise of a Term.

By the Assent of the Executor, the executory Devise cannot be barred.

An executory Devise of a Term, how to take Place.

No executory Devise upon an Estate-Tail.

Where Lands are devised to be sold by the Executors, and the Money to be distributed; where to be sued for.

A Devise to his five Sons-in-Law to sell, one dies; the others sell; and good.

proper Names. *Cro. El. 26. pl. 5. See Title Authority.*

A Devise to two jointly and severally, is a Jointtenancy; because coupled with the Word jointly. *Popham 52.*

Where a Man devises his Lands to his Children to be equally divided between them by his Executors or his Feoffees, &c. There they are Joint-

Tenants until such Division made; but where it is to two and the Heirs of their Bodies equally to be divided between them, by equal Portions; and if one dies the other shall be his Heir; and afterwards one dies, they are Tenants in Common of an Estate-tail at the Commencement; and altho' it is said equally to be divided, it is not intended a Division of the Possession, but of the Interest and Title. *Dal. 77. pl. 7. and 39 pl. 15. See Title Tenants in Common.*

A Devise to three; and that the Survivor shall be each other's Heir; they are all Joint-Tenants; and so is the Meaning of the Will. *Cro. El. 163. pl. 7.*

A Man had two Sons and two Daughters; and devised his Lands to his Wife for Life, and after to his Issues; and gave his Daughters 10*l.* each at such an Age; and that one should not be Heir to the other's Legacy; this was held to be a Devise to the Sons only. *Cro. El. 742. pl. 19.*

A Devise to A. B. of Lands *Imperpetuum*, the Devisee shall have a Fee: Because otherwise the Word *Imperpetuum* cannot be performed. *Keilw. 43. b. 44. a.*

An Administrator of a Term, or an Executor, may in his Life-time sell it, and the Sale shall be good. But devise it he cannot; because the Devise doth not take Effect till his Death.

How the Assent of the Executor is to be to a Devise of a Term. 1 *Lev. 25. 2 Plow. 510. a.*

After the Executor has assented to the first Devise, it lies not in the Power of the first Devisee to bar him who hath the future Devise. 8 *Rep. 96. a.*

An executory Devise shall be allowed to take Place within the Compass of one Life, but not after a dying without Issue: Because that would make a Perpetuity. 1 *Lev. 136.*

An executory Devise cannot be upon an Estate-Tail. *Vangb. 273.*

Where Lands are devised to be sold by Executors, and the Money distributed to certain Uses; it is not a Legacy to be sued for in the Ecclesiastical Court, but only in Chancery. *Hob. 265.*

A Man had five Sons-in-Law; and devised that his Sons-in-Law shall sell his Lands; one of the Sons-in-Law dies; the Survivors sell; and adjudged a good Sale because he named them not by their

A Man

A Man devises his Lands to his Executors to pay his Debts, provided that they, or any of them, may sell; he makes several Executors; two of them sell, and held good. *Moul. Case 463.*

When Lands are settled or given for Payment of Debts and Legacies; all the Debts upon Bonds and simple Contracts and Legacies shall be paid in Proportion; but otherwise in case of Judgments and Debts which charge the Lands. *Chanc. Rep. 32.*

Whether the Heir shall be forc'd to sell Lands, devised to be sold after the Death of the Executor, when no Party is named to sell. *Chanc. Rep. from 176 to 180.*

Where the Executor of an Executor was decreed to sell. *Chanc. Rep. 180.* Where Lands are devised to Executors to pay Debts the Heir shall be compelled to join in the Sale. *Ibid. 262.*

Devise of Lands to be sold, and says not by whom; the Heir must sell. But a Devise of Lands to be sold for Payment of Debts, and says not by whom, the Executor must sell. *1 Lev. 304.*

A Devise of a Term for Years to his Son, for all the Years to come after the Death of his Wife. This is a good Devise, and the Son shall not take as a Remainder, but by executory Devise. But this could not be by any Grant or Conveyance at the Common Law. *8 Rep. 94. b. 95. a.* A Devise to his Son and the Heirs of his Body for 500 Years, is not an Entail, but for Years. *10 Rep. 87. a. Moore, Case 1067.*

Where Goods themselves are devised there can be no Remainder over; but there may be a Remainder where only the Use and Occupation of them are devised. *March 106. pl. 113. Chanc. Rep. 129, 130.*

A Devise of a Term to one and the Heirs males of his Body, is not an Entail; because there can be no Entail of a Term, therefore the Term by such Grant or Devise vests wholly in the Donee or Devisee, and he may bar his Issue, and it shall not go to the Issue but to the Executors or Administrators of the Donee; but if the Remainder of such Term be limited over, the particular Donee in Tail, or for Life, can't sell to the Prejudice of the Remainder; but such Remainder shall be reserved by the Common Law. *Moore, fo. 810.*

When the Wife dies, this vests in the Son as an executory Devise: As if he had devised, that after his Son had paid so much to his Executors; or that after the Death of B. A. should have the Term &c. In these and such like Cases they are executory Devises. *8 Rep. 95. b.*

A Devise to several, and that any of them may sell; two sell and good.

Where Lands are given for the Payment of Debts and Legacies, in what Manner they shall be paid.

Who shall sell where no Person is appointed to sell.

An Executor of an Executor decreed to sell.

Where the Heir shall join.

Where it is for Payment of Debts, Executor must sell.

Devise of a Remainder of a Term is good by executory Devise, not as a Remainder.

How a Remainder of Goods may be devised.

There can be no Entail of a Term.

Who shall dispose of it.

But not to sell to the Prejudice of him in Remainder.

Where it vests as an executory Devise, and when.

What are executory Devises.

When

Where a Devise of a Remainder of a Term is good as an executory Devise.

A Devise of so much of his Term as shall be Arrear at his Death.

By the Devise of the whole Term the Interest is in the Devisee.

But if it had been to him for Life, and that if he died it should remain over; there it is good.

Leases pass by a Devise of *omnia bona*.

So by a Devise of his personal Estate.

A Devise of all Estates real and personal, for payment of Debts, is a Fee.

What shall be an executory Devise.

Where upon a Default of Payment, a Legatee shall take by executory Devise.

A Devise not good as a Remainder, but good by executory Devise.

yet as an executory Devise; because somewhat remained to be devised, when the Estate in Fee determined upon B. not having any Issue. *Vaugh.* 270.

A Recovery will not destroy an executory Devise.

very bars only where there is a Privity in Law, as he in Remainder or Reversion. *Carter* 53.

A Devise of a Term in Tail shall go to the Executors.

a Chattel, which cannot be entailed, and the Devisee may dispose of it as he pleases.

Estates by Implication may be by Will, not by Deed.

Implication is, That the Devisee must have the Thing devised, or none else can have it. *Vaugh.* 261, 262, 263, &c.

A Devise to the Son after the Death of his Wife is a good Devise to the Wife by Implication.

Where a Term is devised to A. for Life, Remainder to B. this Remainder is good by way of executory Devise. *March* 136. See *Moore, Case* 1028.

A Man may devise so much of his Term as shall be Arrear at his Death, but cannot grant it. *Cro. El.* 9. 8 *Rep.* 95. a.

By the Devise of the whole Term, the whole Interest was in the Devisee; and when it was in him it could not remain over. But if the Land had been devised to him for Life; and that if he died it should remain over, there it had been good.

4 *Leon.* 390. See *Moore, Case* 1028.

By a Devise of *omnia bona*, Leases shall pass; for *bona* comprehends all Chattels. *Cro. El.* 387. So also by the Devise of his personal Estate. *Chanc. Rep.* 16.

A Devise of all Estates, real and personal, for the Payment of Debts and Legacies, is a Fee. *Chanc. Rep.* 196, 197, 262.

A Devise shall never be construed to be an executory Devise, where it may be taken otherwise.

A Devise, that if the Son and Heir pay not all the Legacies, the Land shall go to the Legatees. This, upon Default of Payment, shall vest in the Legatees by executory Devise. *Vaugh.* 271.

A Devise to A. and his Heirs, as long as B. hath Heirs of his Body, the Remainder over; such latter Devise is good, though not as a Remainder, yet as an executory Devise; because somewhat remained to be devised, when the Estate in Fee determined upon B. not having any Issue.

A Contingent Remainder may be destroyed by a Common Recovery, but an executory Devise cannot. See 2 *Saund.* 390. 2 *Lev.* 39. For a Recovery bars only where there is a Privity in Law, as he in Remainder or Reversion.

If a Term is devised to a Man, and the Heirs male of his Body, his Heir male shall not have it, but it shall go to his Executors. For a Term is but a Chattel, which cannot be entailed, and the Devisee may dispose of it as he pleases.

Estates by Implication may be by Will, but not by Deed. 2 *Lev.* 79. But when they are allowed in Wills, it is with due Restrictions; a necessary Implication is, That the Devisee must have the Thing devised, or none else can have it. *Vaugh.* 261, 262, 263, &c.

A Man devised Goods to his Wife, and that after her Decease his Son and Heir shall have the House where the Goods are, this is a good Devise of the House to the Wife for Life by Implication; for the Son cannot have it, nor any Body else during

ring the Wife's Life ; *ergo* she must have it. *Vaugh.* 263. But it is not so in case of a Devise of a Term, for the Devisor cannot in his Life make an Estate for Life out of a Term. *Moor, Case 871.*

Equity will not make good a Devise of a Possibility. 3 *Lev.* 427.

A Chose in Action is not devisable. *Cro. Jac.* 371. *pl.* 5.

An Advowson in Fee is devisable. *Cro. El.* 359. *pl.* 19.

If upon Articles for a Purchase, the Purchaser dies, and devises the Land before the Conveyance executed, the Land passeth in Equity. *Chanc. Rep.* 39.

A Man devises 500 *l.* to his Daughter, if she shall attain her Age of twenty-one Years. Now if she dies before she attain that Age, the Legacy is gone : But if the Devise had been to be paid her at her Age of twenty-one Years, then it is *Debitum in presenti solvendum in futuro*, and her Administrator shall have it if she dies before twenty-one.

A Man devises to D. and his Heirs all his Lands in B. and elsewhere in *Com. Kant.* and afterwards buys more Land in B. and then D. dies in the Devisor's Life-time, having Issue a Son. The the Devisor dies. And held, that by the Death of D. in the Life of the Devisor, the Devise became void. Also, that the after-bought Land should not pass in the Devise. *Brett and Rigden.* 1 *Plow.* from 342. to 345. See *Carter* 2, 3, 4. *Davis and Kemp.*

A Man devises Lands to another and his Heirs, the Devisee dies in the Life of the Devisor, then the Devisor dies, the Heir shall not take ; for the Heirs are not named as Words of Purchase, but only to limit what Estate the Devisee should have ; for without the Word *Heirs* he could not have a Fee. 1 *Co.* 105. a. The Will is void, for the Heir cannot be a Purchaser. 1 *Co.* 115. b.

A Man devises to his Son R. in Tail, Remainder to his Son E. in Tail, Remainder to his eldest Son J. in Tail, Remainder to his own right Heirs ; R. hath Issue a Son, and dies in the Devisor's Life-time, then the Devisor dies, and the first Question was, Whether the Son of R. should take as Devisee, the Testator having declared verbally that he should ? And as to this Point the Court was divided. *Cro. Eliz.* 422. *pl.* 20. 423.

The other Point was ; Admitting the Devise not to be good to the Son of R. whether the elder Son should have it as long as any of the Issue of R. were living, or whether E. should enter presently, as in his Remainder ? And all the Judges agreed in this Point, that E. in Remainder should have it ; for the Devise to R. be-

Not so in the Case of a Devise of a Term.

Equity will not help Devise of a Possibility.

A Chose in Action is not devisable.

An Advowson in Fee is devisable.

A Devise of Lands agreed to be purchased, before the Conveyance executed, is good.

A Devise of 500 *l.* if she attain twenty-one ; if she dies before, the Legacy is gone.

Where it is *Debitum in presenti solvendum in futuro*, and her Administrator shall have it.

A Devise to a Man and his Heirs, Devisee dies in the Life of the Devisor.

Where the Word *Heirs* is only to limit what Estate the Devisee shall have.

Devisee in Tail dies in the Life of the Devisor.

The Devisor makes a new Declaration of his Intent.

Whether the Heir at Law or Remainder Man shall have it during the Life of the first Tenant in Tail's Issue.

ing void, it is the same thing as if it had never been. *Cro. El.* 422. *pl.* 20, 423.

No Allowance can be made for Maintenance where there is a Devise over.

A Legacy to an Infant, the Father receives it, and dies insolvent, where it shall bind the Infant, and where not.

A Devise of a Rent towards bringing up his Child to Learning, he shall have the Rent, tho' not so brought up.

shall have the 5 *l.* *per Annum.* 2 *Leon. Case* 186. Note, It is towards his bringing up in Learning.

Where the Devise is, that the Wife shall take Profits, *quousque*, &c. and where it is that he devised the Profits, *quousque*, &c.

not meddle; for nothing is devised to the Wife, but a Confidence which is determined by her Death; but if the Profits of the Lands had been devised to the Wife until the Age of the Infant, to bring him up to twenty one, that would have amounted to the Devise of the Land, and so a Chattel in the Wife. 3 *Leon. Case* 118.

A Devise of the Profits till a Child comes to twenty-one, is a Term, though the Child dies.

A Devise of the Profits gives Power to sell.

Authority to take the Profits is a Devise of the Profits.

A Devise of Lands for Payment of Debts and Legacies, Remainder over, is *quasi* a Term, but in a Deed it is a Freehold.

a Deed it is a conditional Freehold. *Cro. El.* 315. *pl.* 10 330. *pl.* 5.

Devise to an Infant *en Ventre sa mere.*

Where a Legacy is given to a Child payable at twenty, and if he dies before, then to another; here the Child shall not be allowed any Maintenance because of the Devise over; but if that had not been, they would. *Chanc. Rep.* 249.

A Devise of a Legacy to an Infant at ten Years old, which was then paid to the Father, who died insolvent; and the Infant at Age sued the Executor for the Legacy: Held at first a good Payment, but the Executor took a Bond to save him harmless, and then adjudged he should repay it. *Chanc. Rep.* 247.

A Man devises a Rent of 5 *l.* *per Annum* to his younger Son towards his Education and bringing up in Learning; this Devise is not conditional, and though he be not brought up in Learning, he

A Man devises that his Wife shall take the Profits of the Estate given to his Son, until he come to twenty-one, to maintain and bring him up, and died; the Wife married, and died during the Son's Nonage: Adjudged that the second Husband should

not meddle; for nothing is devised to the Wife, but a Confidence which is determined by her Death; but if the Profits of the Lands had been devised to the Wife until the Age of the Infant, to bring him up to twenty one, that would have amounted to the Devise of the Land, and so a Chattel in the Wife. 3 *Leon. Case* 118.

A Devise of the Profits till a Child comes to twenty-one, is a good Devise of a Term, till the Child should have come to twenty-one, though he die before. *Chanc. Rep.* 114.

A Devise of the Profits gives Power to sell, but it is otherwise where it is annual Profits. *Chanc. Rep.* 240.

An Authority to take the Profits is as much as a Devise of the Profits which gives an Interest. *Aleyn* 45.

Lands were devised to two Persons to hold for the Payment of the Legacies in a Will, and the Debts of the Testator, and afterwards to A. B. in Tail; here is no Freehold in the Devisees, but only *quasi* a Term for Years, for the Profits are not certain, nor the Debts; but in such a Limitation in

Where a Devise to an Infant *en Ventre sa mere* is good, and where not. See 1 *Keb.* 802.

A Man devises all his Lands that he hath, or should have, at the Time of his Death : His after-purchased Land shall not pass by this Devise. *Earle's Case. 4 Jac. 2. in B. R.*

A Devise of Lands to two ; one dies before the Testator, the Whole survives. *Show. Rep. 91.*

A Man makes his Will, which is attested and subscribed by two Witnesses in the Testator's Presence ; afterwards he makes a Codicil, confirming this Will in several Particulars, and is attested and subscribed in the Testator's Presence by two Witnesses ; one whereof was a Witness to the Will. This is not a good Will, it not being attested and subscribed by three Witnesses. *Show. Rep. 69. 88.*

If the Father devises his Lands to J. S. during the Minority of his Son and Heir, in Trust for his Heir, and for his Maintenance and Education until he be of Age ; this is no devising of the Custody within the Statute of 12 Car. 2. cap. 24. for he might have done this before the Statute. *Vaugh. 184.*

A Man who had two Daughters devises to his Wife to distribute amongst his Children during her Widowhood, she marries again, and gave the whole to one Child ; the other Child was relieved, because her Power determined upon her Marriage.

A Man devised to his Wife, in hopes that she would leave it to his Son ; this is no Trust for the Son. *Chanc. Rep. 310.*

A Lease will pass by the Devise of *omnia bona*, if there be not other Circumstances to guide the Intent of the Devisor. *Moor, Case 744.*

A Man seised in Fee leases for 10 l. per Ann. and in his Will says, " As to my Lands and Tenements, " I devise the Rent of 10 l. per Annum to A. B. for " Life ; with Remainder over : And adjudged, that the Word *Rent* is not sufficient by the Statute of Wills to pass the Land it self. *Moor, Case 880.*

The Act of 12 Car. 2. did not intend, that every Heir should be in Custody until twenty-one : Therefore he shall be in this Custody but so long as his Father appoints ; and if he appoints no Time, there is no Custody. *Vaugh. 185.*

If the Father appoints the Custody till twenty-one, and if the Guardian dies before the Heir comes to twenty-one ; the Guardianship determines with the Death of the Guardian, and is a Condition in Law. *Vaugh. 185.*

A Devise to a Corporation, though not exactly by the right Name, shall be good. *Dal. 78. pl. 8.* See Title *Disnommer.*

A Devise of all his Lands in D. and afterwards he purchaseth other Lands in D.

A Devise to two ; one dies before the Devisor, the Survivor shall have the Whole.

A Will of Lands with two Witnesses ; and after a Codicil with two Witnesses will not do.

A Devise in Trust during the Minority of his Son, and for his Education.

12 Car. 2. cap. 24.

A Devise to be distributed amongst his Children during her Widowhood, she marries, her Power is gone.

A Devise to his Wife, hoping she will leave it to his Son ; this is no Trust for the Son.

By a Devise of *omnia bona* Leases pass.

A Devise by the Word *Rent* is not sufficient to pass the Land it self.

How long an Heir shall be in Custody.

How, where no Time is appointed.

How it is when the Guardian dies.

A Devise to a Corporation, tho' mis-named, is good.

A Man

Several Instances where the Devisee shall have a Fee, though not express'd so.

or that J. S. shall do with the Lands at his Discretion; in all these Cases the Devisee hath a Fee. 1 *Leon.* 156. *Case* 219.

A Devise to A. in Fee, and afterwards, 'tis said, to B. for Life, how it is to be.

To A. B. in Fee, and after said to be to C. D. in Fee, how to be.

By a Devise of all his Estate, a Fee passed.

in Lands devised for Payment of Debts and Legacies; the Debts must be paid before Legacies, but Debts upon simple Contracts include Debts. But where the Debts charge the Lands, *Quare*.

A Devise of 20 s. per Annum shall be for Life.

Devise of the Profits is a Devise of the Land.

A Devise of a House cum pertinentiis, Land in the Field will pass.

then they proved the House to be Freehold, and the Land Copyhold; then it would not pass.

A Devise of a Legacy upon Condition of marrying with Consent, how to be.

issuing out of Lands, it is not good at Common Law. See *Poph.* 58, 59. and Title Marriage.

A Man says in his Will, I devise all my Lands to the Discretion of my Father, or I will all my Lands shall be at the Disposition of J. S. or I will my Lands to J. S. to give or sell at his Pleasure, or that J. S. shall do with the Lands at his Discretion; in all these Cases the Devisee hath a Fee. 1 *Leon.* 156. *Case* 219.

A Devise to J. S. in Fee, and afterwards it is said to J. N. for Life: Both Parts shall stand, and in Construction of Law the Devise to J. N. shall be first. *Cro. Eliz.* 9. pl. 2.

So where the Devise is to J. S. in Fee, and afterwards it is said in the same Will to J. D. in Fee; this Devise is good to both as Tenants in common or Joint-Tenants. *Cro. El.* 9. pl. 2.

A Man seised in Fee devises all his Estate to a Stranger; by this a Fee passes. 3 *Mod.* 45, 46. See *Style* 281. 1 *Roll. Abr.* 834. pl. 14. 2 *Lev.* 91. 4 *Mod.* 89, 90. *Cro. Car.* 447, 449. *Hob.* 2.

A Devise of Lands for Payment of Debts and Legacies, the Debts shall be paid before Legacies; and Debts upon simple Contracts shall be paid equally with Debts upon Specialties. But where there were such Debts as charged the Lands, the Court would consider. *Chanc. Rep.* 248, 249, 275.

A Man devises 20 l. per Annum to be paid out of the Profits of his Lands, and says not for how many Years; this shall be for Life. 1 *Roll. Abr.* 845. N^o 25. *Co. Litt.* 42. S. R. 84.

A Devise of the Profits of the Lands is a Devise of the Land it self. 5 *Mod.* 63, 64. See 101, 102, 103. Not of the annual Profits.

A Devise of an House with the Appurtenances, and thereby the Land in the Field was claimed. *Fenner* Justice was of Opinion, that it would pass; the House to be Freehold, and the Land Copyhold; then it would not pass. *Cro. El.* 704. pl. 24.

Where a Devise is of 100 l. to a Daughter upon Condition she marries with the Consent of A. B. This by the Spiritual Court is good, though she marries without such Consent; but if it be to be

Dilapidations.

Dilapidations is where an Incumbent suffers the Parsonage-House, or Vicarage-House, or Barns, &c. to fall down, or be in Decay, for want of necessary Reparations.

Dilapidations, what.

Where it is said, That Dilapidations are suable for only in the Ecclesiastical Court, that is to be intended where the Suit is grounded upon the Canon Law: For an Action of the Case might have been brought at the Common Law by the Successor, against the Executors or Administrators of the Dilapidator, and Damages recovered. See *Parson's Counsellor* 97, 98. and *Clergyman's Law* 311. See the Statute of 13 *Eliz. cap. 10.* and 14 *Eliz. cap. 11.*

Where Dilapidations must be sued for.

If a Parson suffers Dilapidations, and afterwards takes another Benefice, whereby his former Benefice becomes void; his Successor may have an Action against him, and declare, That by the Custom of the Realm he ought to pay him *Tantas denariorum summas quantas sufficiunt ad Reparandum*, &c. 3 *Lev.* 268. which see. But at first, the Court doubted of it; and I have known it attempted, but never prevailed in, until that Case of *Jones and Hill* in 3 *Lev.*

13 *Eliz. cap. 10.*

14 *Eliz. cap. 11.*

Where the Action lies against the Dilapidator by his Successor.

Fraudulent Deeds made by spiritual Persons to defeat their Successors of Remedy for Dilapidations, shall be void. 13 *Eliz. cap. 10.*

Fraudulent Deeds to prevent the Recovery of Dilapidations, void.

13 *Eliz. cap. 10.*

Diminution, See { Certiorari.
 { Error.
 { Original.
 { Variance.

Disability.

See Abatement.

Disability, what.

Disability is where a Man by any Act or Thing done by himself or his Ancestors, or for or by any other Cause, is disabled or made incapable to inherit; or to take Benefit or Advantage of a Thing, which otherwise he might have had or done.

Disabilities at the Common Law, what.

Some Disabilities are by the Common Law, and some by Statutes. By the Common Law, Infancy, Ideocy, *Non-sane* Memory, Coverture, &c. 11 Rep. 77. a.

As to Infancy.

Of these, some are absolute, as Infants, who cannot do any Act that will bind, but may in time be avoided. *Ibid.*

As to Ideots, *Non Compos*, Feme-Coverts.

Some are *secundum quid* & *non simpliciter*: And therefore if an Ideot, *Non Compos*, or Feme-Covert, make any Conveyance, except it be by Fine or Recovery, it is avoidable. 11 Rep. 77. a.

So of Bishops, Parsons, Vicars, Prebendaries, &c.

So a Bishop without Dean and Chapter; Parson or Vicar, without the Patron and Ordinary; Prebendary, without the Bishop, Dean and Chapter, &c. have Power to dispose of their own Possessions during their Incumbency, but not to prejudice their Successors.

Masters and Fellows of Colleges, Archbishops and Bishops disabled.

Disabilities by Act of Parliament, as Masters and Fellows of Colleges, by 13 Eliz. and now Archbishops and Bishops, by 1 Jac. 1. cap. 3. All which are disabled to do any Thing to the Prejudice of their Successors. 11 Rep. 77. a.

13 Eliz. cap.

1 Jac. 1. cap. 3.

Disceit.

Disceit is where a Disceit is done by one Man to another, in not performing of his Bargain or Promise; or not selling of good Commodities, or putting of any Cheat upon the Buyer.

Disceit, what.

By a Statute made 33 H. 8. cap. 1. it is enacted, That if any Person doth falsly and deceitfully get into his Hands or Possession any Money, Goods, Jewels, or other Things of any other Person by Colour of any false Token or counterfeit Letter made in another Man's Name, and shall be thereof convicted by Witnesses before Justices of Assize in their Circuits, or before Justices of the Peace at the Sessions, or by Action in any of the King's Courts, shall be punished by Imprisonment, Pillory, or any corporal Punishment, except Death. Sect. 2.

The Punishment of deceiving by false Tokens and Letters in other Mens Names.

33 H. 8. c. 1.

The Action of the Party deceived for the same Things which he was deceived of, as if this Act had never been made. Sect. 4.

The Party deceived may have his Action.

In an Action of Disceit, the *Sciens* need not to be proved at the Trial: Because it shall be presumed that the Party knew whether the Wares were good or bad. Trin. 34 Car. 2. Rot. 802. B. R.

The [*Sciens*] need not be proved at the Trial, in an Action of Disceit.

If I have any Commodity (as Vintnals, &c.) that is corrupt, and I knowing of it to be so, sell it for good, an Action lies for this Disceit: But though it be corrupted, if I know it not, though I affirm it to be good, yet no Action lies, unless I warrant it. So note a Difference between an Affirmation and a Warranty. Cro. Jac. 469. New Dyer 75. in Margine.

Diversity between an Affirmation and a Warranty.

The Plaintiff declares upon an *Emisset* of an Hogshead of Ale, *Et in Cons' inde adtunc & ibidem*, he warranted it to be good, whereas it was not. It was moved in Arrest of Judgment, That it should have been *Warrantizando vendidit*; and not as it is here laid, that *in Consideratione inde warrantizavit*, which shall be intended to be some Time after the Sale, whereas it ought always to be Part of the Contract. * *Curia*, It shall be intended that the Warranty was at the Time of the Sale, especially being after a Verdict.

How the Action to be laid on a Warranty.

See *Postea* in this Title.

* It is a general Rule, That the Warranty must be made at the Time of the Sale. Cro. Jac. 196, 197. Bridgm. 127.

Falso & fraudulenter vendidit, after a Verdict, imports, That it was *scienter*, and supplies the Want thereof. Style 310. 3 Keb. 807. 1 Sid. 416.

Where *falso & fraudulenter* supplies *scienter*.

A Man

A Man possessed of Goods sells them as his own, which were not so. An Action lies for this Disceit without Warranty, or alledging that he knew them not to be his. *Show. Rep. 68. See Cro. Jac. 474. pl. 6. and 197. and Cro. El. 44.*

Where a Man sells what he is not possessed of without a Warranty, it is at the Peril of the Buyer.

Case lies for selling of Goods, affirming they were his own, where they were not.

Although not laid that he had not any Damage, nor that J. S. had retaken them.

Case, for that the Defendant such a Day, &c. *falso & deceptivo* sold him such a Day one hundred Sheep, affirming that they were his own Sheep, *ubi revera* they were the Sheep of J. S. and after a Verdict, moved, that he had not shewn, that he had any Damages, or that J. S. had retaken or sued him for them: *Sed non allocatur*; for the Sale of the Goods, affirming them to be his, but knowing them to be a Stranger's, is the Offence and Cause of Action. *Cro. Jac. 474. pl. 6.*

Disceit lies for putting the Mark of a Man who used to make good Cloth, upon bad Cloth.

A diseased Horse is sold without Warranty, no Action lies.

A Man sells a Mare, and warrants her, when she had several Infirmities upon her.

It was not said *Warrantizando vendidit*.

Def. fallaciter decepit the Plaintiff: And moved, that he hath not said *warrantizando vendidit*; for the Warranty may be at one Time, and the Sale at another, although both in one Day. *Cro. Jac. 630. pl. 3. Rast. 9. Old Entr. 19. a.*

Where it lies upon a Warranty in Law.

Case lies for *improvidere* driving of his Horses over the Plaintiff, without the Word *sciens*.

Declaration naught, without *warrantizando vendidit*.

A Man sells Lands, whereof another is possessed, or an Horse in another's Possession; unless there be a Covenant or Warranty for the Enjoyment, it is at the Peril of the Buyer. *Cro. Jac. 197.*

Case, for that the Defendant such a Day, &c. *falso & deceptivo* sold him such a Day one hundred Sheep, affirming that they were his own Sheep, *ubi revera* they were the Sheep of J. S. and after a Verdict, moved, that he had not shewn, that he had any Damages, or that J. S. had retaken or sued him for them: *Sed non allocatur*; for the Sale of the Goods, affirming them to be his, but knowing them to be a Stranger's, is the Offence and Cause of Action. *Cro. Jac. 474. pl. 6.*

A Clothier who sold very good Cloth, which the Buyers upon sight of the Mark would buy without searching it; another who made ill Cloth, put his Mark upon it without his Privy; he who bought the Cloth brought an Action for this Disceit, and adjudged maintainable. *Cro. Jac. 471.*

If a Man sells me an Horse without warranting of him to be sound; if he be distemper'd in his Body, yet no Action lies against him. *Bridgm. 127. F. N. B. 94. C.*

A Man sells a Mare, *adtunc & ibidem sciens* her to be lame with Spavins, Splints, &c. & *ad laborandum impotentem, equam præd. sanam & absque aliqua infirmitate warrantizavit & eand. equam præd. die anno apud*, &c. *eidem quer. falso & fraudulentè adtunc & ibidem vendidit & sic*

Def. fallaciter decepit the Plaintiff: And moved, that he hath not said *warrantizando vendidit*; for the Warranty may be at one Time, and the Sale at another, although both in one Day. *Cro. Jac. 630. pl. 3. Rast. 9. Old Entr. 19. a.*

A Vintner sells Wines as sound, and not corrupt (knowing them to be corrupt) without any express Warranty; an Action of Disceit lies against him; for this is a Warranty in Law. *Keilm. 91. 9 H. 6. 53. b.*

Where the Plaintiff declares, that *improvidere & incaute absque consideratione ineptitudinis loci*, he drove his Horses over the Plaintiff, though not said *sciens* that they were unruly; yet an Action lies. *2 Lev. 172.*

The Plaintiff declared, That the Defendant bargained with the Plaintiff to sell him a Mare, and *adtunc & ibidem sciens* the Mare to be lame, *Equam præd.*

Dishonest.

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pred. sanam & absque aliqua infirmitate warrantizavit, & equam pred. eadem quer. falso & fraudulentis aditum & ibidem vendidit & sic ipsum fallaciter decept; and after Verdict, moved to be brought: Because not said, *warrantizando vendidit.* And the Sale may be at one Time, and the Warranty at another: And Judgment stayed. See *Cro. Jac. 630, 631.*

If my Servant sells an unsound Horse, or other Goods, in a Fair to a Man, no Action lies against the Master for it; for he did not command the Servant to sell it to any particular Person. 9 H. 6.

Where the Action lies against the Master, and where not.

13. b. But if the Servant, by his Master's Order, sells an unsound Horse to any particular Person, there an Action lies against the Master. *Danv. 184. Cro. Jac. 411.*

If a Vintner's Servant sells corrupt Wine, the Action lies against the Master, though he did not order the Servant to sell it to any particular Person.

Where it lies against the Master.

Discent.

See **Attainder.**
Plea and Pleadings.

Discent is either Lineal or Collateral; Lineal is where a Discent is conveyed in the same Line of the whole Blood; as Grandfather, Father, Son, Son's Son, and so downward; Collateral is from another Branch from the whole Blood; as Grandfather's Brother, Father's Brother, and so downward.

Of Discents, Lineal and Collateral.

A Man can have Lands no other ways than by Discent or Purchase.

A Man cannot have Lands but by Discent or Purchase.

The most worthy of Blood shall inherit; as where a Man hath three or more Sons, and the middle Son purchaseth Lands in Fee-simple, and dies without Issue, this Estate shall go to his elder Brother and his Heirs; so also if the youngest Brother purchaseth Lands, &c. and dies without Issue, his Estate shall go to his eldest Brother and his Heirs. *Lit. Sect. 5.*

The most worthy of Blood shall inherit.

No Man can raise a Fee-simple to his own right Heirs, by the Name of Heirs, as a Purchaser, neither by Conveyance of Land, nor by Use, nor

How a Man can raise a Fee simple to his Heirs.

by Devise; nay, a Devise to a Man that is next Heir, and his Heirs, is void; because in all these Cases the Heirs shall take by Discent: For *fortior & potentior est dispositio legis quam hominis*. See *Counden and Clerk's Case*, *Hob.* 30.

He that claims as Heir in Fee-simple, must make himself Heir to him who was last seised.

Where the Dying seised and not the Discent, shall be traversed, and *e contra*.

The Dying seised and not the Discent, is traversable.

Where the Discent is traversable.

What the Discents are which take away Entries.

Discents in Fee-simple taken away.

Issue and dies seised, the Lands by Course of Law descend upon the Issue of the Disseisor as Heir to him; so that the Disseisin is put to

The Disseisee's Remedy.

Discents in Tail which toll Entries.

dies seised, then the Issue enters; this takes away the Entry of the Disseisee, and he is put to his Writ of Entry *sur Disseisin*. *Litt. Sect.* 386.

A Discent upon a Condition broken, or a Limitation upon a Devise shall not toll an Entry.

Where a Man hath Land by Purchase, and dies without Issue, who shall inherit.

The Son purchases Lands and dies without Issue, the Uncle and not his Father shall be his Heir.

It is a Maxim in Law, That a Man who claims as Heir in Fee-simple to any Man by Discent, must make himself Heir to him that was last seised of the actual Freehold and Inheritance. *Co. Litt.* 11. b.

Where Dying seised, and not the Discent, shall be traversed; and where the Discent and not the Dying seised shall be traversed, see in Title Traverse.

The common Learning is, that the Dying seised, and not the Discent, is traversable. *Dyer* 366. pl. 36. *Cro. Eliz.* 378. and *Meering's Case* cited there. *Hill.* 14 H. 8. Rot. 514.

By *Periam* Justice. The Discent in any Case is not traversable, but where both Parties claim by the same Person.

Discents which take away Entries are where the Discent is in Fee or in Fee-tail; (*viz.* the Party must die seised in his Demesne as of Fee or Fee-tail) Discents in Fee which toll Entries are where a Man seised of Lands is disseised, and the Disseisor hath Issue and dies seised, the Lands by Course of Law descend upon the Issue of the Disseisor as Heir to him; so that the Disseisin is put to bring his Writ of Entry *sur Disseisin* against the Heir of the Disseisor for the Recovery of his Land. *Litt. Sect.* 386, 387.

Discents in Tail which Toll Entries are where a Man is disseised, and the Disseisor gives the Land to another in Tail, the Tenant in Tail hath Issue, and dies seised, then the Issue enters; this takes away the Entry of the Disseisee, and he is put to his Writ of Entry *sur Disseisin*. *Litt. Sect.* 386.

No Discent upon a Devise upon a Limitation, or upon a Condition broken, can take away an Entry. *Cro. El.* 919. 920. pl. 14.

If a Man purchases Lands in Fee-simple, and dies without Issue, his next Cousin collateral of the whole Blood shall inherit, how far soever he be from him in the Degree. *Litt. Sect.* 2.

Where there is Father and Son, and the Father hath a Brother, the Son purchases Lands in Fee, and dies without Issue, living his Father, the Uncle shall be his Heir, and not his Father, because Inheritances do lineally descend, but not ascend.

But if in this Case the Son die without Issue, and his Uncle enters, and dies without Issue, there the Father shall have the Land as Heir to the Uncle, not as Heir to the Son. *Litt. Sect. 3.*

If there be three Brethren, and the middle Brother purchases Lands in Fee, and dies without Issue, the elder and not the younger shall have the Land by Discent. *Litt. Sect. 5.*

So if the youngest purchases Lands in Fee, and dies without Issue, the eldest shall have it, as being more worthy of Blood. *Ibid.*

None shall be Heir of Fee-simple Lands by Discent, but one of the whole Blood; for if a Man hath two Sons by divers Venters, and the eldest purchases Lands in Fee, and dies without Issue, the younger Brother shall not have the Land, but the Uncle of the elder Brother, or some other his next Cousin. *Litt. Sect. 6.*

Where a Man hath a Son and Daughter by one Venter, and a Son by another, and the Son of the first Venter purchases Lands in Fee, and dies, the Sister of the whole Blood and not the half Blood shall have the Land. *Litt. Sect. 7.*

A Man hath Issue a Son and a Daughter by one Venter, and a Son by another, and dies seised of Lands in Fee-simple; the eldest Son enters, and dies without Issue, the Daughter shall have the Land as Heir to her Brother, yet the younger Son is Heir to his Father; but if the elder Son doth not enter after the Death of his Father, but dies before Entry, there the younger shall have it as Heir to his Father; but where the elder Son enters after his Father's Death, and hath Possession, the Sister shall have the Land, because of the Maxim, *Possessio Fratris in feodo simplici facit sororem esse heredem*. *Litt. Sect. 8.*

Where two Brothers by several Venters, and the elder seised in Fee, dies without Issue, and his Uncle enters, and dies without Issue, the younger is Heir to the Uncle; for he is of the whole Blood to him, though but of the half Blood to his elder Brother. *Ibid.*

A Man seised in Fee in his own and also of his Wife's Right, they have Issue a Daughter, the Wife dies, and by another Wife he hath a Son, and dies, the Daughter shall inherit the Mother's Land, and the Son the Father's. *Noy 168.*

A Man seised in Fee hath a Daughter, and takes a Wife seised in Fee also, by whom he hath another Daughter; they shall both inherit the Father's Land, but the last Daughter only her Mother's. *Ib.*

But after the Death of the Uncle without Issue, the Father shall have it.

Three Brothers, and the middle Brother purchases, and dies without Issue, the elder Brother shall have it.

So also where the younger Brother dies without Issue.

Only the whole Blood and not the half Blood shall inherit Fee-simple by Discent.

A next Cousin shall have it.

The Sister of the whole Blood shall take before the Brother of the half Blood.

Where the Sister of the whole Blood shall have the Land by the Maxim of *Possessio Fratris*, &c.

Two Brothers by several Venters, the eldest dies without Issue; his Uncle enters, and dies without Issue, the youngest half Brother shall be Heir to his Uncle. *Litt. Sect. 8.*

A Man hath Issue a Son and Daughter by two Venters; the Son shall inherit the Father's Land, and the Daughter the Mother's.

A Man hath two Daughters by two Wives, both Man and Wife seised in Fee, how to be.

There

Diversity in case of Discent between Parents and Children, and Brothers and Sisters.

There is a Difference between Discent from Father and Mother to their Children, and between Brothers and Sisters; for it sufficeth for the Son or Daughter to be of the Blood either of the Father or Mother, viz. to which of them have Inheritance; but the Brothers and Sisters must of Necessity be of the same Father and Mother, else they cannot inherit one the other. *Noy 168.*

Where the Lands shall descend to the Heirs of the Part of the Father, and if no Heirs, escheat.

So likewise in case of a Discent on the Part of the Mother.

In case of a Purchase it is otherwise.

Where the Heir shall take a Reversion in Fee upon an Estate Tail, as a Reversion, and not as a Remainder: So that he shall take by Discent, and not by Purchase.

Where the Heir shall take by Purchase.

How a Man may take by Discent, and how by Purchase.

Where the Limitation is by way of Remainder to the Heir Female, and where it is to take by Discent.

in Tail had been made to J. S. and the Heirs Females of his Body, and J. S. dies, having Issue a Son and a Daughter, the Daughter should have the Land by Discent. *1 Co. 103. a.*

The right Heir in a Purchase ought to be the very right Heir.

Where the Word Heirs are Words of Limitation, and not of Purchase.

Limitation of the Estate, and not Words of Purchase. *1 Co. 104. a.*

Where Lands descend to the Son from the Father, and he enters and dies seized without Issue, this Land shall descend to the Heirs of the Part of the Father; and if there be no Heirs of the Part of the Father, the Lands shall escheat: So likewise it is where Lands descend to the Heir on the Part of the Mother. *Co. Litt. 13. a. Litt. Sect. 4.*

But in case of a Purchase it is otherwise: For if the Son purchase Lands, and die without Issue, the Heirs of the Father's Part, if any, shall have it: But if none, then the Heirs of the Mother's Part. *Ibid.* So is the Case of Cleer and Brook. *2 Plow. 446. &c. Litt. Sect. 4.*

Grandfather, Father and Son: The Grandfather levies a Fine to the Use of himself for Life, and after to the Use of his Son in Tail; and after to the Use of his right Heirs. The Grandfather has a Fee Expectant upon the Estate Tail as a Reversion, and not as a Remainder: So that the right Heir shall take it as Heir by Discent, and not take it as a Remainder by Purchase. *2 Rep. 91. b.*

That which originally vests in the Heir, and was not in the Ancestor, vests in the Heir by Purchase. *1 Rep. 95. a.*

No Person can take as Heir by Purchase, who is not a right Heir; nor by Discent, where the Estate never executed in the Ancestor. *2 Lev. 79.*

A Man makes a Lease for Life, the Remainder to the right Heirs Females of the Body of J. S. and J. S. hath Issue a Son and a Daughter, and dies, the Daughter shall not take the Remainder; for she is not Heir Female to take by Purchase: But if a Gift

in Tail had been made to J. S. and the Heirs Females of his Body, and J. S. dies, having Issue a Son and a Daughter, the Daughter should have the Land by Discent. *1 Co. 103. a.*

In a Purchase the Heir Male or Female of the Body ought to be right Heir *de facto. Ibid.*

When the Ancestor by any Conveyance takes an Estate of Freehold, and in the same Conveyance an Estate is limited either mediately or immediately to his Heirs in Fee or Tail, the Heirs are Words of Limitation of the Estate, and not Words of Purchase. *1 Co. 104. a.*

Discent.

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Discent as Heir, without saying how, is good upon a general Demurrer, being only Form. 1 Lev. 190.

Discent as Heir, without saying how.

Children shall inherit their Ancestors Estates in the right ascending Line, and are not inherited by them. Vaugh. 244.

How Children shall inherit their Ancestors in the right Line.

In the Collateral Lines of Uncle and Nephew, the Uncle as well inherits the Nephew, as the Nephew the Uncle. Vaugh. 244.

How in the Collateral Line.

In the Case of Aliens, nothing interrupts the common Course of Discents, but *Defectus Nationis*. Vaugh. 268.

What interrupts the Course of Discent, in the Case of Aliens,

If a Gift be made to a Man and the Heirs of his Body, and he hath Issue a Son and a Daughter by one Venter, and a Son by another Venter; the Father dies, and the eldest Son enters and dies, the youngest Son shall inherit *per formam Doni*; for he claims as Heir of the Body of the Donee, and not generally, as Heir of the Brother. And this is the Reason of the Rule, *Quod possessio Fratris in feodo simplici**, *facit Sororem esse heredem*: By this Rule the Brother ought to be in actual Possession of the Fee-simple, either by his own Act, or the actual Possession of another: As if it were leased for Years, the Possession of the Lessee vests the actual Fee and Freehold in the elder Brother; and the Sister shall inherit as Heir to her Brother who was last seized: But of a Reversion or a Remainder expectant upon an Estate for Lives, or in Tail, there he who claims the Reversion as Heir, ought to make himself Heir to him who made the Gift, or Lease of the Reversion, or Remainder descended upon him: Or if a Man purchase such Reversion or Remainder, he who claims as Heir, ought to make himself Heir to the first Purchaser. 3 Rep. 41, 42.

To a Man and the Heirs of his Body.

Who shall inherit *per formam Doni*.

Possessio Fratris.

* Note In feodo simplici.

Actual Possession.

How the Discent to be, in case of a Reversion, or Remainder.

A Man seized *ex parte materna*, devises for 16 Years, and afterwards to his Heir *ex parte materna*, the Heir shall be in by Discent and not by Purchase. 3 Lev. 127.

Where the Heir shall be in by Discent, upon the Devise of a Remainder.

Where Lands are conveyed in Fee to a Man's right Heirs, by the Name of Heirs, be it by Use or Devise, yet the Heir is in by Discent: But otherwise it is, if Lands be so conveyed in Tail. Hob. 30.

The Difference between a Conveyance in Fee-simple, and of Estate-Tail, to a Man's right Heirs.

Discharge,

See { Agreement.
Bail.
Promise.

Discharge, what.

Discharge is properly where a Man is confined by some Legal Writ or Authority, and he doth what by Law he is required to do; then he is discharged from that Matter for which he was confined.

Where a *Superfedeas* shall be granted, and the Prisoner discharged.

If one be arrested by a *Latitat* out of this Court, and the Plaintiff do not remove him by a *Habeas Corpus* to the King's Bench, in two Terms after he shall have his *Superfedeas*, and be discharged upon common Bail: So likewise if a Prisoner continues two Terms in the King's Bench, and no Declaration comes in against him, he shall be discharged upon common Bail: But now by a late Statute made 4 & 5 W & M. the Plaintiff may declare against such Prisoner *in Custodia Vic.* or *in Custodia A. B. Balliv. libertat. Decan. & Capitul. Ecclesie Collegiat. Sancti Petri Westm.* or any other Bailiff of the Liberty where such Person is a Prisoner. But Note, the Plaintiff must charge such Defendant with a Writ in Custody at his Suit before he can declare against him. See Title Prisoners.

Whether a voluntary Escape in the Gaoler be a Discharge to the Prisoner.

It is now a controverted Point, That if the Prison-keeper suffer a Prisoner to escape, and afterwards a *Scire facias* issued out against the Defendant, and two *Nichils* returned, and he taken again, whether it is lawful or no? The Court was divided in Opinion. *Pasch. 21 Car. 2. Reg. in C. B.* If it be a voluntary Escape in the Prison-keeper it seems to me to be a Discharge; but if the Escape was tortious it is not, for no Person shall take Advantage of his own Tort.

If the Plaintiff give the Prisoner in Execution Leave to go at large, it is a Discharge of the Execution.

If the Plaintiff, at whose Suit the Defendant is in Execution, do give the Defendant Leave to go at large, that is, out of Prison, the Execution is thereby discharged; and if the Plaintiff do take the Defendant again upon the same Execution and commit him to Prison, the Defendant may bring an *Audita Querela* against the Plaintiff, for his illegal imprisoning of him. *Mich. 23 Car. B. R.* For it shall be intended that the Plaintiff had Satisfaction upon the Execution, or else he would not have given the Defen-

Discharge.

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Defendant leave to go at large: and therefore if he take him again upon the same Execution, the Law will adjudge it an unjust Vexation, for which an *Audita Querela* doth lie.

A Prisoner that is committed for Felony, and brought to this Bar by a *Habeas Corpus*, cannot be discharged, although the Return upon the *Habeas corpus* be not sufficient to give the Court satisfaction that he was justly committed. *Pasch. 24 Car.*

A Prisoner committed for Felony cannot be discharged by B. R. tho' it do not appear that he was justly committed.

B. R. For the Court is always cautious how they give Liberty to Capital Offenders, because the punishing of such Offences concerns much the Good of the Kingdom in its Peace and Safety.

A Prisoner that is brought to the Bar to be bailed by a Writ of *Habeas corpus*, if he were committed for Matter on the Crown-side, must be brought into the Court on the Crown-side, that is,

How a Prisoner who comes to be bailed must be brought into Court.

on that Side of the Court where the Master of the Crown-Office sits; but if he stands committed for a Matter determinable on the Pleas-Side, he must be brought into Court to be bailed on that side of the Court where the Master of the King's Bench Office sits, viz. on the left Hand of the Lord Chief Justice. *Pasch. 24 Car. B. R.* For the King's Bench Court is a Court which holds Plea in a double Capacity, viz. In Criminal Matters which concern the Publick, and in Civil Matters arising betwixt Subject and Subject; and in those Respects it hath several Offices and Officers appropriated to the Transaction and Dispatch of Matters Criminal and Civil; and those Officers have their constant and known Offices and Places in Court to sit for dispatch of such Matters.

Of later time it hath been permitted by the Court to discharge the Bail, if he bring in the Principal before the Return of the second *Scire facias* issued out against the Bail; but anciently it was not so. *Mich. 24 Car. B. R.* This is in Favour of the Bail, whom I conceive the Law doth therefore favour, because it judgeth it hard for one Man to pay another Man's Debt, which he intended not to do, tho' he became Bail for him.

The Bail shall be discharged if he brings the Prisoner into Court before the Return of second *Sci fa*.

A Judgment cannot be discharged by pleading a Parol Agreement between the Parties to discharge it. *27 Jan. 1650. B. S.* For Matters of Record are not not be wiped off with Words; for Records are Things made upon solemn Deliberation, are of a high Nature, and great Regard in Law; but a Release under Hand and Seal is a good Discharge.

A Judgment cannot be discharged by pleading a Parol Agreement to discharge it.

If an Attachment be granted by the Court against one, and he is thereupon taken, he shall not be discharged upon an Affidavit made on his Behalf: But he must appear in Person in Court, and be there discharged or committed, or else bound over to answer Interrogatories, and be fined, if he be reported Guilty: For it is a Personal Offence for which he is attached; and he shall not therefore be discharged, until he yield Obedience in Person to the Court, and be by the Court discharged.

Where a Man is taken upon an Attachment, he must appear in Court.

Payment

Payment was formerly no Plea to a *Sci. Fa.* except only in case of Bail: But now it is a good Plea.

Because the Words of the Condition of the Recognizance are, That the Principal shall render his Body to Prison, or pay the Condemnation, or the Bail will do it for him: So that if the Principal pays the Condemnation, he hath performed the Condition of the Recognizance.

Stat. 4 & 5 Annæ.

to a *Sci. fa.* upon a Judgment.

In an executory Promise, there may be some Parol Discharge.

A Parol Discharge is good before Breach of the Promise.

For by the Breach of it an Injury is done to the Parties, which requires Satisfaction; and such Satisfaction cannot be discharged by Parol. 2 Mod. 259. Cro. Car. 383. 1 Sid. 293.

Where a Discharge of one Obligor discharges all the rest.

How a Discharge is to be pleaded.

ing is good. Cro. El. 253. pl. 24.

A Man may discharge a Promise made to himself, not by himself.

Exoneravit eum of the Promise is a good Plea before any Breach of it.

an Action grounded upon a Promise by Words, it may be discharged by Words; for *eodem modo quo oritur, eodem modo dissolvitur*. Cro. Car. 383. pl. 14, 384.

Payment of the Money due upon the Judgment, is no Plea to a *Scire facias*. 1 Mod. 194. But in a *Scire facias* against the Bail, they may in their Discharge plead, That the Principal paid the Money: Because the Words of the Condition of the Recognizance are, That the Principal shall render his Body to Prison, or pay the Condemnation, or the Bail will do it for him: So that if the Principal pays the Condemnation, he hath performed the Condition of the Recognizance. But now by the Statute of 4 & 5 Annæ, cap. Payment is a good Plea

In a Promise meerly executory on both Parts, something may be discharged by Parol: As if I promise to pay you 5*l.* if you will go to Rome, before you go you may discharge me of my Promise.

A Parol Discharge is good before Breach of the Promise, but not afterwards without Satisfaction made for the Breach of it. Hill. 22 Car. 1. B. R.

If the Obligee by his own Act or Laches discharges one of the Obligors, where they are jointly and severally bound, this by the better Opinion of the Court discharges them all. March 129.

In the pleading of a Discharge if it be of a particular thing, it must be shewn how; but where it is to Multiplicity of Things, there a general pleading is good. Cro. El. 253. pl. 24.

A Man may discharge a Promise made to himself, not by himself; for he cannot discharge his own Promise. Cro. Jac. 483. pl. 19.

The Defendant pleads that before any Breach of the Promise, viz. such a Day at such a Place the Plaintiff *exoneravit eum* of the said Promise: And adjudg'd a good Plea; for inasmuch as this was

Discontinuance,

See { Amendment.
Continuance.
Jeofails.

There is a Discontinuance of the Possession of Land, and a Discontinuance of Process. A Discontinuance in Land is where Tenant in Tail makes a Feoffment in Fee of his Lands. Discontinuance of Process is where it is put sine Die, and dismiss'd the Court.

A Discontinuance, what.

Where a Vouchee may be essoined, and the Essoin is not adjourned, this is a Discontinuance; but where it is not necessary the Vouchee should be essoined, there the want of Adjournment of the Essoin makes no Discontinuance. *Hill. 22 Car. B. R.* Because where an Essoinment is necessary, there it is accounted Part of the Process, and the not Adjournment of it must be a Discontinuance of the Process; but where it is not necessary, there it is accounted as no Part of the Process, and for its not being adjourned, doth not discontinue the Process.

Where the Vouchee may be essoined, and the Essoin is not adjourned, it is a Discontinuance, otherwise where not necessary that Vouchee should be assigned.

An Appeal may as well be discontinued by the Defect of the Process or Proceeding in it, as it may be by Insufficiency of the original Writ. *Hill. 22 Car.*

Where an Appeal may be discontinued.

B. R. For by such Defect in the Proceeding, the Matter depending in Court is as it were out of Court, and made not depending, although the Court was sufficiently at first possessed of the Cause by the Sufficiency of the original Writ; but if the original Writ be not good, the Court is not rightly possessed of the Cause, and then all Proceedings upon it are null, and are to be discontinued.

Plaintiff cannot discontinue after Demurrer joined, &c.

The Plaintiff cannot discontinue his Action after a Demurrer joined and entred, or after a general or special Verdict found, or after a Writ of Enquiry executed without leave of the Court. *Per Magistrum Livesay & alios, &c. Pasch. 21 Car. 2.*

Except the Demurrer was only upon Matter of Form in Pleading.

The Plaintiff may discontinue his Action by the Leave of the Court, after he hath joined in Demurrer with the Defendant, paying Costs to the Defendant, if the Demurrer was only upon Matter of Form in the pleading; but if the Demurrer was as well upon Matter of Substance,

as upon Matter of Form, there he cannot discontinue his Action but by Leave of the Court, and with the Defendant's Consent. *Mich. 22 Car. B. R.* For there is a great Difference betwixt a Demurrer joined upon Matter only of Form, and a Demurrer joined upon Matter of Law and Substance.

A Discontinuance is not perfect till entered on the Roll.

A Discontinuance of an Action or Suit is not a perfect Discontinuance until it be entered upon the Roll; for the Entry of it makes it part of the Record, and a Record cannot be discontinued but by Matter of Record; but if this Discontinuance be to be pleaded, it is not necessary to plead the Entry of it. *Trin. 23 Car. B. R.* For it shall be intended that it is entered without shewing it.

Discontinuance sometimes granted, and sometimes denied after demurrer joined.

In the Case of *Robinson and Vanbrugg, Mich. 1650.* After a Demurrer joined, and spoken unto by Counsel on both sides, it was moved that the Plaintiff might discontinue his Action. *Glyn* Chief Justice answered, That this Motion hath been sometimes granted, and sometimes denied; and that the Common Pleas denied this Motion in the Case of *Butler and Baker.*

A general Demurrer instead of a special, is a Discontinuance.

Where a Demurrer is a general Demurrer, whereas it ought to have been a special Demurrer, this is a Discontinuance, and there can be no Judgment given in the Case upon such a Demurrer. *Hill. 22 Car. B. R.* Because by the Discontinuance the Cause is out of Court.

It is not usual after Demurrer on Arbitration pleaded.

After a Demurrer upon an Arbitration pleaded, it is not usual to discontinue the Action. *Mich. 24 Car. B. R.* But to argue the Demurrer to try the Validity of the Arbitration so pleaded to avoid Delay.

The Court gave the Plaintiff Leave to discontinue after Judgment given for Defendant on Demurrer.

Where the Court gave Leave to the Plaintiff to discontinue his Action, although they had delivered their Judgment for the Defendant upon a Demurrer. See 1 *Saund. 23. 39. 1 Lev. 227, 298.*

Three Replications: Defendant demurs to one, and answers not the other two; Plaintiff joins: It is a Discontinuance.

If there be three Replications, and the Defendant demurs to one of them, and gives no Answer to the other two, and the Plaintiff joins in Demurrer, it is a Discontinuance. *Id. 338, 339.*

Debt upon Bond for Performance of an Award: Plaintiff mistook the Day of Tender, yet the Court after Demurrer joined gave him Leave to discontinue, paying Costs.

See 2 *Saund. 73, 74.* Where in Debt upon Bond to perform an Award, the Plaintiff had mistaken the Day of Tender of the Award; and the Court after Demurrer joined, gave the Plaintiff Leave to discontinue his Action upon Payment of Costs.

No Discontinuance after Verdict.

That a Man may not discontinue after Verdict. 1 *Lev. 48.*

Discontinuance as to Part helped by Verdict.

Discontinuance as to Part cured by Verdict. 3 *Lev. 39. Simile, ibid. 324.*

Where after Leave to discontinue, the Plaintiff waved it, and tried the Cause.

That after Leave to discontinue, the Plaintiff waved it, and tried the Cause. 3 *Keb. 30. pl. 56.*

Discontinuance.

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The Plaintiff cannot discontinue his own Action without Leave of the Court; and if there be no Continuances entred upon the Roll, the Defendant may enter them if they are for his Advantage. *Cro. Jac. 35. pl. 8.*

The Plaintiff cannot after Demurrer joined discontinue without Leave; and the Defendant may, if for his Advantage, enter them.

By an Act made 4 & 5 W. & M. it is enacted, That upon the Demise of any King or Queen, all Pleas to Informations in the Court of King's Bench shall stand and be good in Law, without calling the Defendant to plead again to the same, unless the Defendant desire so to do, and request the same of the Court.

No Discontinuance upon a Demise *le Roy.*

4 & 5 W. & M. cap. 10.

No Suits or Indictments before any Justices of the Peace or Commissioners shall be discontinued by a new Commission.

No Suits, Indictments, or Process before Justices of the Peace, shall be discontinued by a new Commission.

11 D. 6. cap. 6.

In what Cases Discontinuances are amendable, and in what not. See in Title Amendment.

In what Cases amendable, and in what not.

Discontinuance of Process is help'd at the Common Law by Appearance. *Show. Rep. 320.*

Discontinuance of Process help'd by Appearance.

All Discontinuances and Miscontinuances whatsoever, as well before as after Verdict. *Cro. Eliz. 489. Cro. Jac. 528. Cro. Car. 236.* and as well on the Part of the Plaintiff, as on the Part of the Defendant, or other Negligence of the Parties, their Counsellors or Attorneys, are cured after a Verdict, *per Stat. 32 H. 8. cap. 30. 3 Lev. 325. 40. 39. See 36 E. 3. cap. 15. Danv. 352.* But imperfect Verdicts are not help'd by this Statute. *2 Leon. 196. Cro. Eliz. 133. 3 Lev. 55.*

All Discontinuances and Miscontinuances are cured after Verdict.

32 D. 8. cap. 30.

36 E. 3. cap. 15.

They are aided by the Statute of *Jeofails*, as well after Verdict as before; and as well where there be two Verdicts in two several Counties upon one Declaration. *Cro. Jac. 928. pl. 8. 529.*

Discontinuances are aided as well after Verdict as before: So also where there are two Verdicts upon one Declaration.

Where there are two Defendants, one pleads to Issue, to the other's Plea there is a Demurrer; the Issue is tried, and a Verdict against the Defendant; he is out of Court, and no Day shall be given to him against whom a Verdict is found: For he hath no Day in Court to plead any thing. But the Day is to be given to the other Party, who is to plead to the Demurrer. *Cro. Car. 235. pl. 17. 236.*

Trespas for two Things, the Jury find a Verdict for one, and nothing for the other, it is a Discontinuance.

Where a Jury find but for Part, it is a Discontinuance.

The Court will not give the Plaintiff Leave to discontinue upon a Bond, where he may have Covenant. *2 Lev. 118. Mich. 26 Car. 2. B. R.* But afterwards in *Hill. 26 & 27 Car. 2.* the Court permitted the Plaintiff to discontinue, paying of Costs, tho' the Action was brought for the Penalty, and the Case had been argued. *2 Lev. 134.*

Where the Court will give Leave to discontinue, and where not.

In

Where the Plea is but to Part, it is a Discontinuance.

And a Demurrer to it, discontinues the whole.

of cutting down and carrying away the Timber) pleads a Title: So that in the *Quoad* the Trespass as to the Trees was totally omitted: And then upon a Demurrer, the Demurrer being joined, the Whole was discontinued; but by Consent to try the Matter in Law, the Roll was amended. 4 Rep. 62. a.

The Plaintiff may discontinue after arguing of a special Verdict.

Quere, Whether the Defendant shall have his Costs.

In Trespass *quare clausum gregit* & 300 Oaks, &c. then growing, did cut down, and two Cart-loads of Wood did take and carry away: The Defendant to all, *preter* the breaking of the Close, and cutting down of 100 Oaks, Parcel, pleads Not-guilty: And as to the breaking of the Close (but says nothing

of cutting down and carrying away the Timber) pleads a Title: So that in the *Quoad* the Trespass as to the Trees was totally omitted: And then upon a Demurrer, the Demurrer being joined, the Whole was discontinued; but by Consent to try the Matter in Law, the Roll was amended. 4 Rep. 62. a.
The Plaintiff entered a Discontinuance after entering of a special Verdict, and held that he might do it. But it was doubted whether the Defendant should have his Costs, because no Verdict was given. *Cro. Car.* 575. pl. 19.

Discontinuance of Estates.

Discontinuance of Estates, what.

Discontinuance of Estates is where a Tenant in Tail, or a Man seised in the Right of his Wife, &c. by Feoffment, Gift in Tail or Lease, not warranted by 32 H. 8. by Fine or Livery, aliens; then such Alienations are called Discontinuances: In which Cases the Wife after her Husband's Death, nor Issue in Tail after the Death of the Tenant in Tail, nor those in Remainder or Reversion, cannot enter, but are every of them put to his Action.

A Grant without Livery makes no Discontinuance.

A Grant in Fee *sans* Warranty makes no Discontinuance.

Neither doth the King's Grant in Fee, without Warranty.

And the same Law is in Case of such Grant in Fee: For the Grant in Fee makes no Discontinuance without Warranty. 1 Rep. 44. b.

Surrender in Fee of a Copyhold by Tenant in Tail makes no Discontinuance.

Tenant for Life, Remainder in Tail, Reversion in Fee; Tenant in Tail enfeoffs the Reversioner, it is a Forfeiture, and makes a Discontinuance.

A Grant without Livery makes no Discontinuance. 1 Rep. 44. b.

A Grant in Fee without Warranty makes no Discontinuance. *Ibid.*

The King is Tenant in Tail, and grants for Years or Life, and dies, the Patent is void; for a Grant without Livery makes no Discontinuance: This shall bind but only during the Grantor's Life.

Tenant in Tail of a Copyhold surrenders to another in Fee; this makes not any Discontinuance, but the Heir in Tail may enter. 1 Leon. 95. Case 124.

Tenant for Life, Remainder in Tail, Reversion in Fee; Tenant for Life enfeoffs the Reversioner; this is a Discontinuance. 1 Rep. 140. a.

Discontinuance of Estates.

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So Tenant in Tail, Remainder in Tail, Reversion in Fee; Tenant in Tail enfeoffs the Reversioner, it is a Discontinuance. *Ibid.*

Tenant in Tail cannot discontinue if he be not seised by Force of the Intail, unless it be by reason of Warranty. *Litt. Rep. 8.*

So where Tenant in Tail enfeoffs the Reversioner, it is a Discontinuance.

Where Tenant in Tail can discontinue.

Discretion.

When any Thing is left to any Person to be done according to his Discretion, the Law intends it must be done with sound Discretion, and according to Law: And this Court hath a Power to redress Things that are otherwise done, notwithstanding they are left to the Discretion of those that do them. *Trin. 23 Car. 1. B. R.* For their Discretion is not properly Discretion, but Folly or Madness, who act Things contrary to Reason, and against Law.

The Law intends that Things which are to be done at Discretion, should be done according to Law, and B. R. may redress Things that are done otherwise.

Dispensation.

See { King.
Pardon.
Statutes.

A Dispensation doth Jus dare, and makes the Thing prohibited, lawful to be done by him who hath a Dispensation from the King or other Person who hath Power of granting of it.

Dispensation, what.

Malum in se will not admit of a Dispensation. *March Rep. 213.*

What will not admit of a Dispensation.

Where the Subject hath an immediate Interest in an Act of Parliament the King cannot dispense with it; but where the King is intrusted with the Management of it, and the Subject only by way of Consequence, he may. *Per Hale, arguendo. March 214, 215.*

Where the King may dispense with an Act of Parliament, and where not.

Where there is a Penalty only given by the Statute, there the King may dispense with it; but when a Statute is absolute and not *sub modo*, he cannot dispense with it. *Per Shaftoe, arguendo in the same Case, 216, 317.*

Another Instance.

Dispensation.

Where the King may dispense with a penal Law; and where not.

May dispense with Wrongs done to himself.

Not where the Suit is for the Benefit of a third Person.

Who may dispense for Pluralities.

Who may purchase a Dispensation to hold more Benefices with Cure of 8*l.* per Annum than one.

21 H. 8. cap. 13.

Note, this Statute commenced at London, and adjourned to Westminster.

Where the Suit is only the King's for the Breach of a penal Law, and is not to the Damage of a third Person, the King may dispense. *Vaugh.* 334, 336, 339, 340.

Where the Offence wrongs none but the King, he may dispense with it. *Vaugh.* 344.

Where the Suit is the King's, only for the Benefit of a third Person, he cannot dispense. *Vaugh.* 334, 336, 339, 340.

The Pope could formerly, and the Archbishop may now, dispense for a Plurality. *Vaugh.* 20, 23.

Who may now purchase License or Dispensation to hold more Benefices with Cure of the Value of 8*l.* per Annum than one, see the Statute at large, 21 H. 8. cap. 13. Sect. 13, 14, 15, &c.

Disseisor and Disseisin.

Who is a Disseisor.

A Disseisor is he which enters and puts a Man out of his Freehold, without Order of the Law. Co. Litt. Sect. 279. viz. where the Entry is not lawful.

A Disseisin, what.

A Disseisin is a wrongful putting out of him who is actually seized of a Freehold. Co. Litt. 277. a.

A. enters wrongfully into my Lands, and I after accept of the Rent of him; he is no Disseisor.

If one enter wrongfully into my Lands, and after his Entry I accept of Rent of him for the Land, I cannot afterwards take him for a Disseisor.

Trin. 24 Car. 1. B. R. For by my Acceptance of the Rent I have assented to his Entry, and purged the Wrong by admitting him for my Tenant. *Mull versus Mull.* Pasch. 6. Jac. See *Dyer* 173. pl. 15.

Acceptance of Rent will make a voidable Lease good; but not one actually void.

Where a Lease is voidable, Acceptance of the Rent shall make the Lease good: But where the Lease is void, no Acceptance of Rent or other Act can make it good.

Lessee for Years surrenders his Term, and continues the Possession, he is no Disseisor, but Tenant at Sufferance.

Lessee for Years surrenders his Term, and continues the Possession: He is no Disseisor, but at the Pleasure of the Lessor, and is as Tenant by Sufferance. *Cro. Jac.* 304. *Plowd. Com.* 393.

Disseisor and Disseisin.

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A Disseisor dying seized, unless he hath quiet Possession without any Entry or continual Claim above Five Years after the Disseisin, doth not take away an Entry.. 32 H. 8. cap. 33.

When a Disseisin takes away an Entry.
32 H. 8. cap. 33.

When a Feoffor after the Feoffment enters and takes the Profits, and makes a Lease for Years, the Law adjudges this to be a Disseisin; although the Intent of the Parties was, That the Feoffee should make a Lease to the Feoffor for Life. 2 Rep. 59.

Where a Feoffor enters after his Feoffment, it is a Disseisin.

Tenant for Years surrenders his Term to the Lessor, and continues still in Possession, and pays his Rent: This is no Disseisin; because it amounts to a new Lease. Cro. Jac. 304.

Tenant for Years surrenders, but continues in Possession, and pays Rent, it is no Disseisin.

A Lease to commence at Michaelmas is a future Interest: The Lessee enters before Michaelmas, and continues the Possession after Michaelmas: It is all a Disseisin, but it was not turned to a Right by the Lessee's Entry: Because he never was possess'd by Virtue of the Term, but by Disseisin. And here the Lessee may assign his Term over without Entry: Because he had never enter'd. 1 Lev. 46, 47. But where the Lessor enters upon the Lessee's Possession, this turns the Lessee's Estate to a Right, so that he cannot assign his Term off from the Land. 1 Lev. 46.

A Lease to commence in Futuro.
Entry before the Commencement is a Disseisin.

A Disseisor levies a Fine, and declares the Uses to the Conusee; this shall not enure to the Disseisor: But if no Uses had been declared, it would have been to the Use of the Disseisor, and extinguish'd the Right of the Disfeisee. 1 Lev. 128.

How a Fine levied by a Disseisor shall operate.

If one disseise me, and during the Disseisin cuts down the Trees or Grass, &c. growing upon the Land, and afterwards I re-enter, I shall have Trespass against him: For after my Regress, the Law, as to the Disseisor and his Servants, supposes the Freehold to have always Continuance in me: But if my Disseisor makes a Feoffment in Fee, Gift in Tail, or Lease for Life or Years, I shall not have Trespass against those who come in by Title. 11 Co. Rep. 51. Keilw. 1. b.

Trespass lies against a Disseisor and his Servants.

But in this Case, I shall recover all the Mesne Profits against the Disseisor himself. 11 Rep. 51. a.

But lies not against his Feoffee or Lessee; and why.

Tenant at Will makes a Lease from Year to Year; this is no Disseisin, but the Lease is void; for he who disseiseth a Man, ought to claim Inheritance in the Land, whereof the Disseisin is done. 4 Leon. Case 95. But in Cro. El. 830. pl. 38. it is said, That if Tenant at Will makes a Lease for Years, and the Lessee enters, he is only the Disseisor, and a Release or Confirmation to the Tenant at Will afterwards is void. See Co. Litt. 57. a. Cro. Car. 304. In Latch, per Jones Justice. Lessee at Will leases for Years; the Lessee enters; this is a Disseisin

Tenant at Will leases over, it is no Disseisin, but a void Lease.

A Disseisor ought to claim an Inheritance.

Tenant at Will leases for Years, and the Lessee enters, he is the Disseisor.

Disseisin

Disseisin at the Election of him who hath the Freehold, and not otherwise. *Latch* 53. Also the Lessee for Years was adjudged to be the Disseisor in *Blunden and Baugh's Case*. *Ibid.* which Case see in *Cro. Car. fo.*

Distress for Rent.

See { Rent.
Tender.

A Distress, what.

Distress is a Thing which is taken and distrained upon Land for Rent behind; or other Duty or Damage done upon the Land, although the Property of the Thing belongs to a Stranger: But where they are a Stranger's Cattle, they ought to be Levant and Couchant upon the Land, so long as they have well rested themselves there; or else they are not distrainable for Rent or Services.

Cattle driving to *London*, are distrainable for Rent.

Cattle which were driving to *London* to be sold, were lodged in a Close upon the Road, and were there distrained for the Rent of the Land; and held that they are distrainable: Because, says the Book, it is not reasonable that the Cattle coming to *London* from all the remote Parts of the Kingdom, should be privileged from a Distress for the Landlord's Rent for all the Way that they come. 3 *Lev.* 260, 261. But afterwards (as I heard) it was upon a Bill in Chancery, brought by the Grazier against the Distreiner, decreed, That he should be repaid the full Value of his Cattle, and also his Charges at Law and Equity.

Where Cattle may be distrained for Rent before they are Levant and Couchant; and where not.

couchant; but in

There is a Difference where the Cattle come upon the Land of another in Default of the Owner of the Cattle; as by Escape or Stray; and where in Default of another: In the first Case they may be distrained for Rent before they be levant and couchant; but in the other Case not. 2 *Leon.* Case 8.

Executors of Tenant for Life, may distrain for Rent.

32 *H.* 8. cap. 37.

Executors of Tenant for Life are within 32 *H.* 8. cap. 37. and may distrain for Rent due to the Testator. *Lutw.* 1230.

Two Distresses must not be taken for one Rent, if there be Goods sufficient.

Two Distresses cannot be taken for one Rent, if there were sufficient Goods when the first Distress was made: Because it was a Folly of the Party, who had not taken a sufficient Distress at the first.

Lutw. 1536. But if there were not sufficient Goods when the first Distress was taken, he may distrain again.

Distress for Rent.

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In what Cases Cattle must be Levant and Couchant, before they can be distrained for Lords, or other Rent, and in what not. *Lutw.* 1577. to 1581.

Where Cattle must be Levant and Couchant, and where not.

An Exposition of the Statute of 2 W. & M. Sess. 1. cap. 5. and what Corn and other Things are distrainable, and when: And where Notice is to be given to the Owner, and where not. *Lutw.* 214, 215. See for this more fully, 4 *Mod.* from 385. to 395. What Things are distrainable, and what not. See *Co. Litt.* 47. a. b.

An Exposition of the Statute of 2 W. & M. Sess. 1. cap. 5. What Corn is distrainable, and where Notice to be given.

By the Statute of 2 W. & M. Sess. 1. cap. 5. it is enacted, That where any Goods or Chattels shall be distrained for any Rent reserved, and due upon any Demise, Lease or Contract whatsoever; and the Tenant or Owner of the Goods so distrained, shall not within five Days next after such Distress taken, and Notice thereof, with the Cause of such taking, left at the chief Mansion-House, or other most notorious Place upon the Premises, charged with the Rent distrained for, replevy the same with sufficient Security to be given to the Sheriff according to Law: Then after such Distress and Notice as aforesaid, and Expiration of five Days, the Person distraining shall and may, with the Sheriff or Under-Sheriff of the County, or the Constable of the Hundred, Parish or Place where such Distress shall be taken, and who are hereby commanded to be aiding and assisting therein, cause the Goods and Chattels so distrained to be appraised by two Sworn Appraisers, whom such Sheriff, Under-Sheriff or Constable, are hereby empowered to swear to appraise the same truly, according to the best of their Understanding: And after such Appraisement made, may lawfully sell the Goods and Chattels so distrained for the best Price can be gotten, towards Satisfaction of the Rent for which they shall be distrained; and of the Charges of such Distress, Appraisement and Sale, leaving the Overplus in the Hands of the Sheriff, Under-Sheriff or Constable, for the Owner's Use.

What Goods are distrainable for Rent.
2 W. & M. Sess. 1. cap. 5.

When and where Notice to be given.

When to sell the Distress, and how to be.

Also, that it may be lawful for any Person, having Rent due upon any such Demise, Lease or Contract, as aforesaid, to seize and secure any Sheafs or Cocks of Corn, or Corn loose or in the Straw, (Corn thrash'd is as well distrainable as Corn in Sheaves. 1 *Lutw.* 214.) or Hay lying and being in any Barn or Granary, or upon any Hovel, Stack or Rick; or otherwise, upon any Part of the Land charged with such Distress: And to lock up and detain the same in the Place where the same shall be found, for or in the Nature of a Distress, until the same shall be replevied upon such Security as aforesaid: So as nevertheless such Corn, Grain or Hay, so distrained as aforesaid, be not removed by the Persons distraining, to the Damage of the Owner thereof, out of the Place where the same shall be found and seised; but be

To distress Corn in Sheafs.

Or in the Straw, or Hay in a Barn, &c.

Corn thrash'd, distrainable.

What to do with it when distrained.

kept there as impounded until replevied or sold, in Default of replevying within the Time aforesaid.

Where there is a Pound-Breach
With treble Damages.
That upon any Pound-Breach, or Rescous of Goods or Chattels distrained for Rent, the Person grieved shall have a special Action on the Case for the Wrong thereby sustained, and recover treble Damages and Costs of Suit against the Offender and Offenders, in any such Rescous and Pound-Breach, any or either of them, or against the Owner or Owners of the Goods distrained, in case the same be afterwards found to come to his Use or Possession.

An Action for a Rescue.

See a Declaration upon this Clause, and a Recovery thereupon. 1 *Lutw.* 213, 214.

Where Goods may be distrained for Rent off the Premises.
8 Annæ.

Where Lessee for Life, for Years, at Will, or otherwise, of any Messuages, Lands, &c. whereon any Rents are reserved, shall fraudulently carry off his Goods from the Premises, to prevent the Lessor from distraining for Rent, That then the Lessor or any Person impower'd by him, within five Days next after such carrying off such Goods, may take and seize the same where they shall be found, as a Distress for the Arrears of such Rent, and sell or dispose thereof in such Manner, as if the said Goods had actually been distrained by the Lessor upon the Premises for his Arrears of Rent.

A Proviso, That it shall not extend to a Sale of Goods *bona fide* before Seizure.
8 Annæ.

Proviso, That this Act shall not impower such Lessor to seize any Goods for Rent, which shall be sold *bona fide*, for a valuable Consideration, before such Seizure made.

Debt now lies against Tenant for Life, for Rent, upon 8 Ann.

The Landlord may now as well bring an Action of Debt for Rent against his Tenant for Life, as distress him for Rent, and this by the Statute of 8 *Annæ*.

All such Distresses to be liable to the same Orders and Directions, as the Distresses are by 2 *W. & M. Sess.* 1. cap. 5.

Note, all such Distresses to be made as aforesaid, shall be liable to such Sales, and the Moneys arising thereby to be distributed in such Manner, as in the herein before-mentioned Act of 2 *W. & M. Sess.* 1. cap. 5. is directed and appointed.

How and when Rent shall be distrained for, upon a determined Lease.
8 Ann.

By another Clause of the same Act, it is enacted, That if any Rent be due upon any determined Lease for Life, or for Years, or at Will, such Persons may distress for such Arrears after the Determination of those Leases, as they might have done if such Lease had been in Being.

Distress to be within six Calendar Months, during the Lessor's Title, and during the Tenant's Possession.

Provided such Distress must be within six Calendar Months after the Term ended, and during the Continuance of the Lessor's Title, and the Possession of the Tenant who owed the Arrears.

Not to extend to the Queen.

This Act not to extend to the hindering of the seising of any Goods for any Debts, Fines, Forfeitures, Penalties, &c. due to the Queen, &c.

Provided,

Distress for Rent.

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Provided, That in case any such Distress and There must be Rent due. Sale as aforesaid, shall be made by Vertue or Colour of this Act, for Rent pretended to be in Arrear, and due; whereas in truth no Rent is Arrear, or due to the Person distreining, or to him, or them, or those, in whose Name or Names, or Right, such Distress shall be taken as aforesaid: That then the Owner of such Goods and Chattels distreined and sold as aforesaid, his Executors or Administrators, shall and may, by Action of Trespass, or upon the Case, to be brought against the Person or Persons so distreining, any or either of them, his or their Executors or Administrators, recover the double Value of the Goods distreined and sold, together with full Costs of Suit.

Lessee for Years grants away all his Term to another, rendering Rent, he cannot distress for this Rent: Because he hath no Reversion in him; but Debt will lie for it as a Sum in Gross. 2 Lev. 80.

A Distress may not be used, because he hath it by Law only as a Gage or Pledge. Cro. Jac. 148.

The Penalty, if no Rent due.

There can be no Distress for Rent, where there is no Reversion.

A Distress must not be used, and why.

Distress and Distringas.

Amercement.
Damage Feasant.
See Leet.
Tender.
View.

A Man may distress the Cattle or Goods of any Man doing Damage actually upon his Ground; but if Cattle are upon my Ground, and I go to distress them Damage Feasant, and the Owner or other Person drives them away, I may pursue, and take and impound them: Also for Fines and Amercements in a Leet, the Goods of him so amerced may be taken away, in whose Ground soever they are within the Jurisdiction of the Court.

Distress, what.

Distringas Juratores is, where an Issue in Fact is joined to be tried by a Jury, which is returned by the Sheriff in a Panel upon a Venire Facias for that Purpose; and thereupon there issues out a Writ of Distringas Juratores to the Sheriff, commanding him to have their Bodies (if upon a Trial at Bar) in Court at the Return of the Writ; if at Nisi Prius, then upon the Day of the Trial at the Assizes.

Distringas Juratores, what.

The

Distress and Distringas.

The seising of a Stray is not a Distress of it, and why.

The seising of a Stray is not a Distress of it, for he that doth seise it claims a Property in it, viz. a conditional Property, that is, if it be not owned within a Year and a Day. 21 Car. B. R. And no Man can distress that in which he claims any Property; for to distress is but to take one thing for another, and to put it into the Custody of the Law as a Pledge for another thing which is due to him that doth distress from him that is distressed.

It lies against a late Sheriff for a Misdemeanour done in his Office.

An Amercement lies not against a Sheriff out of his Office for a Misdemeanour done by him whilst he was in his Office; but a *Distringas nuper Vicecomitem* lies against him for it. Pasch. 24 Car. B. R. For an Amercement lies properly against an Officer of the Court for some Misdemeanour, and is not a Process of the Court as a *Distringas* is, which may issue forth against one that is a Stranger.

How a *Distringas Juratores* issues out.

The Writ of *Venire Facias* for the Sheriff to summon a Jury is returnable by him into the Court; and upon the Return made of it to him, there issues out of the Court another Writ called a *Distringas Juratores*, to cause the Jury to appear in Court at the Trial of the Cause, if the Trial be at the Bar in this Court, or at the Assizes in the County where the Action lies, if the Trial be to be there. Mich. 24 Car. B. R. The

Difference between a *Venire* and a *Distringas*.

Venire is in the Nature of a Summons, but a *Distringas* is a Process of a higher Nature to make them appear upon a Penalty, and so many as make Default forfeit Issues.

When a *Distringas Juratores* ought to be delivered to the Sheriff.

The Writ of *Distringas Juratores* ought to be delivered unto the Sheriff so timely, that he may warn the Jury to appear four Days before the Writ is returnable, if the Jurors live within forty Miles of the Place of Trial, and eight Days if they live farther off, 13 Maii 1651. B. S. That they may have time to settle their own Businesses, and prepare for their Travelling.

Alias, or *Pluries Distringas* not to be sued out before the *Distringas Juratores* delivered to the Secondary.

No Writ of *Alias* or *Pluries Distringas Juratores cum tales*, for the trying of Issues at the Bar, shall be sued out before the precedent Writ of *Distringas Juratores* with the Panel of the Names of the Jury to it annex'd shall be delivered to the Secondary of this Court, to the intent that the Issues forfeited by the Jury for their not appearing upon the precedent Writ may be duly estreated. Per Cur. Hill. 14 & 15 Car. 2.

How the Plaintiff must sue out a new Writ of *Venire Facias* by Stat. 7 & 8 W. 3.

By an Act of 7 & 8 W. 3. For the Ease of Jurors, and better regulating of Juries, it is enacted, That if the Plaintiff shall not proceed to Trial at the Assizes, after the Teste of the Writ of *Habeas Corpora* or *Distringas* with a *Nisi Prius*; that then, and in all such Cases, (other than where Views by Jurors shall be directed) the Plaintiff or Demandant, when he shall think fit to try the said Issue at any other Assizes, shall sue forth and prosecute a new Writ of *Venire Facias* directed to the Sheriff in this Form. Quod de novo Venire Facias coram,

Distress and Distringas.

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coram, &c. duodecim liberos & legales homines de vicin' de A. quor' quilibet habeat decem librat' terr' tenementorum vel reddit' per annum ad minus per quos, &c. Et qui nec, &c. after the ancient Manner: That is to say, the Writ is to be in the same Form as the first, only adding the Words *de novo*, which Writ being duly returned and filed, a Writ of *Habeas Corpora*, or *Distringas* with a *Nisi Prius*, shall issue thereupon for the ancient Fees, as in the Case of a *Pluries Habeas Corpora*, or *Distringas* with a *Nisi Prius*, upon which the Plaintiff or Demandant shall and may proceed to Trial, as if no former Writ of *Venire Facias* had been prosecuted or filed in that Cause, and so *toties quoties*, as the Cause shall require.

And if any Defendant or Tenant shall be minded to bring the Issue to Trial by Proviso, (when by course he may) he may of the issuable Term next preceding such intended Trial to be had at the next Assizes, sue out a new *Venire Facias* to the Sheriff in Form aforesaid by Proviso, and prosecute the same by Writ of *Habeas Corpora*, or *Distringas* with a *Nisi Prius*, as though there had not been any former *Venire Facias* sued out, or returned in that Cause.

How the Defendant may bring the Issue to Trial by Proviso.

This Act also provides, That Jurors to serve upon the *Tales* shall be Freeholders or Copyholders of the County, and returned upon some other Panel to serve at the said Assizes, and attending in Court, and may be challenged by Plaintiff or Defendant, Demandant or Tenant, as if they had been impanelled upon a *Venire Facias* to try the Issue.

Jurors to serve on the *Tales* must be Freeholders or Copyholders of the County.

Where a Juror is withdrawn, there ought to issue out a *Distringas* with a *decem tales*, and not a *Venire Facias*.

If a Juror be withdrawn, a new *Distringas* must issue.

A Man cannot justify the Sale of Goods taken for a Distress upon a Plaint in a Manor-Court. *Cro. Jac. 255. pl. 13.* But the Lord may sell a Distress taken for a Fine. *Noy 19. 17.*

Goods taken for a Distress out of a Manor-Court cannot be sold.

Where a Lord may sell.

Distress and Sale of Goods upon the Breach of a By-Law, is naught; it should be a Distress only. *3 Lev. 281.*

Distress and Sale of Goods upon a By-Law, is naught; it must be Distress only.

Trespass lies not for taking of a Distress in one County, and impounding of it in another; but only an Action upon the Statute of 1 & 2 P. & M. *cap. 12. 3 Lev. 48.*

What Remedy for taking a Distress in one County, and impounding of it in another. *1 & 2 P. & M. cap. 12.*

It must be in a Pound Overt in the same County not above three Miles from the Place where taken, and must be all impounded in one Place. Penalty is 5 *l.* and treble Damages.

1 & 2 P. & M. r. 12. must be in a Pound Overt not above three Miles from the Place. The Penalty.

To take but four Pence for keeping in Pound or impounding of one whole Distress; Penalty 5 *l.* besides what he shall take above the four Pence.

To take but four Pence for impounding of the Distress. Penalty.

Distress and Distringas.

Who may take Distresses, and where.
52 D. 3. r. 15.

No Man shall take a Distress out of his Fee, or in the Highway or common Street, but only the King or his Officers having special Authority for so doing.

Where a Commoner may distress.

A Commoner may distress a Stranger's Cattle, and avow, shewing a Damage to himself; or have an Action on the Case, if he can alledge any Damages to himself, viz. That he could not have his Common *in tam amplo modo quam debuit*. 3 Lev. 104. See Title Common and Commoners.

No Distress for an Amercement in a Court-Baron *sans* Prescription. But in a Leet of common Right.

For an Amercement in a Court-Baron, the Lord cannot distress without a Prescription: But for a Fine, and for all Amercements in a Leet, a Distress is incident of common Right. 11 Rep. 45. a. b.

How the Distringas, Return and View to be by the Statute of

4 & 5 Annæ.

By the Statute of 4 & 5 Annæ, For the Amendment of the Law, it is enacted, That if the Court shall think it necessary, the Jurors shall have a View of the Messuages, &c. And in such Case the Court may order a special Writ of *Distringas*, by which the Sheriff shall be directed to have six out of the first twelve Jurors named in such Writ, or some greater Number of them at the Place in Question, some convenient Time before the Trial, who shall have the Matters shewn by two Persons to be named in the Writ, to be appointed by the Court: And the Sheriff who is to execute it, shall, by a special Return upon the same, certify, That the View hath been had according to the Command of the said Writ.

Distribution.

See { Administrators.
Intestates Estates.

What the Degrees for Distribution are.

Where there are Grandchildren of an Uncle, and Aunts, and a Son of an Uncle, living; all their Antecedents being dead, the Grandchildren cannot come in Jure Representationis, being in a Degree more remote than Brothers and Sisters Children: Besides which Case, Representation doth not take Place, and then they are out of Equality of Degree. See the last Case in *Raymond*, and Title Intestates Estates, and also in Title Administrators and Administration.

A Distri-

Distribution.

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A Distribution may be sued for as well in the Chancery as in the Ecclesiastical Court. 2 Chanc. Rep. 373.

Where the Suit may be for it.

A Man dies intestate, leaving a Wife and one Child, the Wife shall have one Third, and the Child the other two Thirds. *Per Pollexfen, 3 Mod. 53.*

The Wife shall have one third. and the Child or Children two Thirds.

The Act of Parliament doth immediately upon the Death of the Intestate, and before any Distribution made, vest an Interest in the respective Persons who are appointed to have Distribution of the Surplus; so that if any one die before Distribution (though within the Year,) yet his Share shall go to his Executors or Administrators, and not to the Survivors and next of Kin to the Intestate. 2 Chanc. Rep. 374.

A Person who hath a Right dying before Distribution, his Part shall not survive, but go to his Executors or Administrators.

It was decreed, that the half Blood shall have an equal Share with the whole Blood. *Ibid. 376.*

Half and whole Blood to have equal Shares.

Where Trustees lay out the Money of an Infant in purchasing of Lands in Fee, this shall be accounted Part of his personal Estate, he dying a Minor. 2 Chanc. Rep. 377.

Lands purchased with Infant's Money shall be accounted Part of his personal Estate, he dying a Minor.

Divorce, See Marriage.
Dockets, See Judgment.

Donative.

See Church.

Donatives are so called because they began only by the Foundation and Erection of the Donor: And the Patron, in conferring of them, doth not make a Presentment of his Clerk to any Ordinary to have him admitted and instituted, and to be inducted by the Archdeacon: But the Patron, though a Layman, yet by his Writing confers this upon his Clerk, which is called a Collation. Clergyman's Law 120. See Yelv. 60.

Why called Donatives.

A Donative is a Benefice merely given and collated by the Patron, to a Man without either Presentation to, or Institution by the Ordinary, or Induction by his Order. Godolph. 202.

What is a Donative.

The Presentee when he is in hath a Freehold. Godolph. 191.

A Paro-

A Parochial Church may be a Donative.

How it is where the King builds a Church.

What Church may be a Donative.

To whom the Incumbent may resign.

Who are to visit.

Who is capable of a Donative.

How a Spiritual Benefice must be granted, and when the Grant is void.

if granted expressly for Life: For a Spiritual Benefice can only be granted for Life, not for Years, or at Will. *Davis's Rep.* 45, 46.

If the true Patron once presents, it's always presentable.

So it is in Case of the King.

But if a Stranger presents, it's void,

Who are capable of Donatives; and why.

14 Car. 2. cap. 4.

Subscriptions according to the said Statute. See *Clergyman's Law* 123.

A Resignation of it must be made to the Donor, not to the Bishop.

If a Benefice, with Cure; must in two Months read the 39 Articles and Prayers Forenoon and Afternoon.

Possession; and also to read within the same Time the Morning and

The Penalty.

14 Car. 2. cap. 4.

A Parochial Church may be a Donative, and exempt from all Ordinaries Jurisdictions. *Godolph.* 201. 262.

If the King founds a Church or a Chapel, he may exempt it from the Ordinary's Jurisdiction, and the Lord Chancellor or Keeper shall visit it. *lb.*

A Parochial Church may be a Donative, and exempt from the Ordinary's Jurisdiction, and the Incumbent may resign to the Patron, and not to the Ordinary, nor may the Ordinary visit, but the Patron by Commissioners appointed by him; but a meer Layman is not capable of a parochial Donative, but it ought to be a Clerk in Orders; for though he comes in by a Lay Donation, yet his Function is spiritual. *Godolph.* 262. pl. 18.

If a Donative be given generally, without Limitation of Estate, as for Life; yet the Gift is good, and the Grantee hath as large an Estate therein, as

But if the true Patron of a Donative doth once present to the Ordinary of the Diocese, and suffers Admission and Institution thereupon, he thereby hath made it always presentable. *Cro. Jac.* 63. *Co. Litt.* 344. a. Nay, this holds in the Case of the King also. *Style's Rep.* 172. But if a Stranger presents a Clerk to the Ordinary, who is instituted and inducted; this doth not entitle the Clerk to it, because it is meerly void. *Cro. El.* 653. *Co. Litt.* 344. a.

No Man can be capable of a Donative, unless he be Priest lawfully ordained; because every Donative must be either a Parsonage, Vicarage, or other Ecclesiastical Promotion or Dignity within 14 Car. 2. cap. 4. Note, he must take the Oaths, and make the

A Resignation of a Donative must be to the Donor, who hath the sole Visitation and Correction; and the Ordinary hath nothing to do therewith. *Cro. Jac.* 63. pl. 1. *Moore, Case* 1062.

Note, if the Benefice be a Benefice with Cure, it is safe for him to subscribe the 39 Articles in the Presence of the Ordinary of the Diocese. 1 *Inst.* 144. a. 2 *Cro.* 63. Also, it is safe for him to read the said Articles within two Months after he hath the said Articles within the same Time the Morning and Evening Prayers in his Church, and the Form of giving his Assent or Consent thereunto; otherwise his Benefice becomes void. *Vide* the Statute of 14 Car. 2. cap. 4.

Dower.

See Receipt.

Dower, by the Law of the Land, is a Portion which a Widow hath of the Lands of her Husband; which by the Common Law is the Third Part of all the Lands in Fee Simple, or Fee Tail, whereof the Husband was sole seized at any Time during the Coverture.

What Dower is.

The Wife by *Magna Charta*, cap. 7. shall have her Quarentine, viz. shall remain in the Capital Messuage of her late Husband (which is not a warlike Castle for the Defence of the Realm) by the Space of forty Days; within which Time her Dower ought to be assigned to her. See 2 *Inst.* 16.

She shall have her Quarentine, within which Time her Dower ought to be assigned to her

Magna Charta. cap. 7.

By the Custom of Gavelkind, the Wife shall be endowed of the Moiety so long as she keeps her self sole and without Child. *Co. Litt.* 33. b.

How Dower of Gavelkind Land shall be.

Where a Lessee shall be received in Dower; and how Execution shall be. See Title Receipt; and *Cro. El.* 564.

Where Tenant for Years shall be received.

The Writ was *Præcipe A. B. quod reddat. E. F. rationabilem dotem suam de terris, &c. dudum B. quondam viri sui*; whereas it should have been *Præcipe A. B. quod reddat. E. F. que fuit uxor, B. F.* And Day was given to shew Cause why it should not abate. *Cro. Jac.* 217. pl. 4.

A Mistake in the Writ if doth not say *quod reddat E. F. the Widow.*

Why it should not abate.

The Sheriff returned that he had delivered Seisin of the third Part of the Honour, Hundred, Tenements, and Advowson, viz. of one Tenement or Farm in *C. vocat W. Farm tunc vel nuper in occupatione A. B.* And moved that Tenement and Farm was uncertain: And also of thirteen Messuages and Tenements, *cum terris, pratis, pascuis & pasturis eisdem pertinent. tunc vel nuper in tenura A. B. C. D. E. F. &c.* which was moved to be void for Uncertainty; but held to be good; because it is but the Return of the Sheriff, which needs not such precise Certainty as in Declarations: And when he says he hath delivered them all by Metes and Bounds, it is good.

Dower of an Honour, Hundred, Tenements, Advowson, *Bona & catalla felonum.*

How the Sheriff's Return to be; and how it differs from a Declaration in Ejectment.

Not dowable of a Common in gross sans nombre.

Also a Feme is endowable of an Advowson in Gross, and of *bona & catalla felonum*, which are Franchises. *Cro. Jac.* 621. pl. 12. She shall be endowed of a Common

But is of a Common Appendant or Appurtenant.

Appendant

Appendant or Appurtenant; which will also pass *cum pertinent*. But of a Common in Gross *sans nombre*, she is not dowable. *Cro. Car.* 300. pl. 3.

And of the House of the Barony.

Stat. 4 & 5. W. & M. cap. 16. does not bar the Wife of the Mortgagor of her Dower, who did not join.

Nothing in the Act of 4 & 5. W. & M. cap. 16, Entituled, *An Act to prevent Frauds by clandestine Mortgages*, (which see in Title *Mortgages*) shall bar any Widow of a Mortgagor of Lands or Tenements from her Dower, and Right of, in, and to the mortgaged Lands (mentioned in the said Statute) who did not legally join with her Husband in such Mortgage; or otherwise lawfully bar and exclude her self from such her Dower or Right.

And of the Profits of an Office, or Fair, or Market,

Devise to a Wife *durante viduitate*, is no Bar to her Dower.

devised to her. *Lutw.* 735.

The interposing Estate in Fee to preserve the contingent Remainder, bars a Wife of her Dower.

Question, *viz.* If the Remainder to J. S. and his Heirs for the Life of W. D. was such an interposing Estate between the Estate for Life of W. and the Remainder to the Heirs of his Body, that the Wife should not be endowed? And it was said for the Demandant, that all the Estate was really in W. and the Remainder to J. S. for the Life of W. was but a Possibility; that if W. should commit a Forfeiture, J. S. should take Advantage thereof for the Preservation of the Remainders: But in the mean time all the Estate is executed in W. As in *Lewis Bowle's Case* where all the Estate was executed in the Father, until the Birth of a first Son. And altho' by this Possibility the Estate for Life of W. is not merged, yet the Tail is executed to such Purpose, that the Wife shall be endowed: But the Court notwithstanding gave Judgment for the Tenant. 3 *Lev.* 437.

Where the Wife of the Mortgagor shall not have Dower.

Where the Husband takes by Fine and renders back again; the Wife shall not have Dower.

When she may have a new Execution; and when not.

She shall be endowed of the House whereof her Husband was made a Baron. 5 *Mod.* 64, 65.

Nothing in the Act of 4 & 5. W. & M. cap. 16, Entituled, *An Act to prevent Frauds by clandestine Mortgages*, (which see in Title *Mortgages*) shall bar any Widow of a Mortgagor of Lands or Tenements from her Dower, and Right of, in, and to the

A Woman may be endowed of the Profits of an Office, or of a Fair, or Market. *Pasch.* 24 *Car.* 2. B. R. Because it is an Inheritance, and may be reduced to a Certainty, *sub modo*.

A Devise to a Wife *durante viduitate*, is no Bar to her Dower, unless express'd in the Will, That if she claims her Dower, she shall lose the Thing

W. D. Tenant for Life, Remainder to J. S. and his Heirs for the Life of W. Remainder to W. and the Heirs males of his Body; Remainder over. W. marries the Demandant, and dies without Issue.

And if his Wife should have Dower, was the

When Lands are redeemed upon a Mortgage, the Wife of the Mortgagor shall not have Dower. *Cro. Car.* 191.

If the Husband takes a Fine *sur connissance de droit*, and renders again; tho' it was once the Husband's, yet the Wife shall not have Dower. *Cro. Car.* 191. *Co. Litt.* 31 b.

If the Demandant in Dower accepts the Land assigned by the Sheriff, she can't in another Term pray a new Execution. *Cro. El.* 10. pl. 19.

Dower.

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A Woman recovers Dower of a Manor wherein were several Copyholds for Life; and the Custom is that *dominus pro tempore* may grant for one, two or three Lives in Possession or Reversion.

How it is where a Woman recovers Dower of a Manor.

The Sheriff upon a Writ of Seisin returned, That he had delivered her the third Part of the Manor, *viz.* such and such Tenements.

She keeps a Court and grants one of the Copyhold Tenements to three for their Lives: *Habendum* after the Death of A. B. the present Copyhold Tenant thereof, for Life; she afterwards dies;

She mayhold a Court, and grant Copies according to the Custom.

and then A. B. dies: And adjudged that this Grant was good altho' it was not executed in the Life of the Tenant in Dower who granted it; for the Grant is warranted by the Custom. *Cro. El. 661. pl. 10, 662.*

Where Lands are limited to the Use of A. for Life, Remainder to B, &c. for Years, Remainder to the Heirs males of the Body of A. A. dies;

An intervening Estate for Years shall be no Hindrance of Dower.

this intervening Estate for Years is no Impediment to the Execution of the Estate-Tail, nor shall be any Hindrance or Bar to the Wife's Dower. *Lutw. 729, to 733.*

A Wife shall be endowed of a third Part of a Reversion expectant upon a Term for Years, and of the third Part of the Rent reserved thereupon. *Lutw. 729.*

Dower shall be of a third Part of a Reversion after a Term for Years, and a third Part of the Rent.

The Widow, Demandant in Dower, shall not recover any Damages, except the Husband died seised; and this is by the Stat. of Merton. *cap. 1. Dyer 284. a. pl. 33.* and there she shall have it from the time of his Death.

Where the Feme shall recover Damages in Dower. *Merton. cap. 1.*

In Dower, the Jury gave Damages as in Case, where the Husband died seised; which dying seised is not found by the Verdict. *Curia.* The Demandant may pray Judgment of the Lands and release the Damages; or may aver that the Husband died seised, and have a Writ to enquire of the Damages. *1 Leon. 92. Case 118.*

How to recover Damages when the Jury do not find the dying seised.

If the Husband died seised, then upon a Judgment by Default in Dower, there must be an Award upon the Roll of such his dying seised. Whereupon there goes forth a Writ of Inquiry, Whether the Husband died seised, and what Time hath passed since he died, and what the yearly Value of the Land is, and what Damages the Demandant sustained, by Reason of the Dower not being set out? Which Damage being so found upon the Writ of Inquiry, Judgment is given for the same. *Vide Stat. Merton 20 H. 3. cap. 1. See Co. Litt. 32. b. Cro. Jac. 621, Raym. 366.*

What the Proceedings are, where the Husband died seised.

20 H. 3. cap. 1.

Where

Non-tenure pleaded to part and Detinue of Charters to other Part.

and a Verdict and Judgment for the Demandant. See the Judgment and the whole Proceeding, *Benl.* 153, 154, 155.

Where Judgment against Lessee signifies nothing.

Where the Husband died seized, and the Tenant pleads, That he was always ready to render Dower: Then what the Proceedings shall be.

the Original in Dower to the Day of Inquiry? And Damages are to be found only for that Time.

Tenant as to Part pleads not Tenant of the Freehold; to the Residue, Detinue of Charters.

detains them from him; upon Delivery whereof he will render her Dower. *Mod. Case* 217.

Termor received upon a Writ of Dower, How the Judgment and Execution shall be.

adjudged, that the

And how the Execution shall be executed.

come upon the Land and demand Seisin for the Widow; and thereby she should have the Moiety of the Rent with the Reversion. *Cro.* 564, 565. *pl.* 92.

How it is where the Husband did not die seized.

A Common Recovery had against Husband and Wife, shall bar the Wife of her Dower, though she hath no Recompence.

The Wife shall be barred of her Dower if she doth not claim within five Years after the Fine.

Causa adulterii, no Bar of Dower.

Where in Dower the Tenant as to Part pleads Non-tenure; and as to other Part Detinue of Charters, and a Will; upon Issue taken upon these Pleas, Judgment for the Demandant. See the Judgment and the whole Proceeding, *Benl.* 153, 154, 155.

Where Dower is brought against the Tenant Lessee for Years, in which he may plead Non-tenure; yet if Judgment and Execution be against him he may enter upon the Demandant. *1 Leon.* 92. *Case* 119.

If the Husband died seized, and upon declaring in Dower, the Tenant pleads, That he is, and always was, ready to render Dower; and Judgment be had thereupon: Then there goes an Inquiry of what Damages only from the Time of the *Teste* of

the Original in Dower to the Day of Inquiry? And Damages are to be found only for that Time.

In Dower; the Tenant, as to part, pleads in Abatement, that he is not Tenant to the Freehold; but one *I. S.* as to the Residue, he says that the Husband died possess'd of two Charters, (and sets them forth) which came to her Hands, and she

detains them from him; upon Delivery whereof he will render her Dower. *Mod. Case* 217.

In Dower the Tenant made Default after Default; whereupon another prayed to be received for his Term, made to him before the Coverture; and he was received and his Term traversed: And Judgment shall be entred generally to recover Seisin of the Moiety (being Gavelkind) and that the Execution shall be special, *viz.* That the Sheriff should not oust the Termor; but that he should

come upon the Land and demand Seisin for the Widow; and thereby she should have the Moiety of the Rent with the Reversion. *Cro.* 564, 565. *pl.* 92.

If the Husband did not die seized, and the Tenants (on the Declaration in Dower) suffer Judgment by Default, there are no Damages nor Costs, only Judgment for Seisin. See *2 Inst.* 80. *1 Inst.* 32. *b.* *Exc.* 4 *Leon.* *Case* 69.

A Common Recovery had against Husband and Wife of the Husband's Lands, shall bar the Wife of her Dower, altho' she hath no Recompence in Value. *2 Rep.* 74. *Plow.* 514.

The Husband levied a Fine and died; the Wife did not bring her Writ of Dower within five Years after his Death; this Fine shall bar her. *3 Leon.* *Case* 71, *Mod. Cases* 154.

A Divorce *Causa adulterii* or Elopement is no Bar of Dower. *Noy* 108.

A Writ of Dower cannot be brought against Tenant by *Elegit*, or Tenant for Years. 9 Rep. 17. a.

Lies not against Tenant by *Elegit*, or for Years.

Ne unques accouple in loyal Matrimony, with the Bishop's Certificate, and Judgment thereupon. 9 Rep. 19 b.

Ne unques accouple, and Bishop's Certificate.

Upon *Ne unques accouple*, &c. the Court writes to the Bishop to certify the Marriage, which Bishop must make his Return certainly, viz. whether they were lawfully married or not; and not to return the special Matter as a Jury may do. *Dalison*, 79. pl. 16.

What the Bishop must certify upon *Ne unques accouple*.

Upon *Ne unques accouple*, the Bishop certifies they were *accouple in vero Matrimonio cum præd. W. sed clandestine, & quod W. & E. thori & mensæ participatione mutuo cohabitaverunt usque ad mortem præd. W.* And adjudged a good Return. *Cro. Car.* 351. pl. 16.

The Return of the Bishop upon *Ne unques accouple* held a good Return.

A Man dies seised of three Manors; the Sheriff upon a Writ of Seisin gives the Plaintiff Seisin of one of the Manors: This is naught; because he must give Seisin of the third Part of each Manor. *Moore*, Case 66.

How Seisin to be delivered in Dower.

By the better Opinion, where Judgment is recovered against an Infant by Default, it is not Error. *Cro. El.* 567. pl. 1. *Cro. Jac.* 111. pl. 8.

Judgment by Default against an Infant, is not Error.

Where a Judgment in Dower is recovered against an Infant upon a Verdict, the Judgment must be, *Sed nihil de misericordia quia infans*; otherwise it is Error. *Cro. Car.* 410. pl. 5.

How Judgment is to be upon a Verdict in Dower against an Infant.

If Tenant in Dower ploughs up Meadow or Pasture, it is Waste: Because it alters the Evidences of the Land, which a Tenant in Dower cannot do, but must leave it as she found it. *Co. Litt.* 53. b.

Tenant in Dower cannot plow Pasture, &c. it is Waste in her.

The Wife of the Conuzee of a Fine shall not be thereof endowed, because it is but a fictitious Seisin. *Vaugh.* 41.

The Wife of a Conuzee in a Fine shall not be endowed of it.

A Man seized in Fee marries, makes a Feoffment, is attainted of Treason, and pardoned, and died. This Attainder bars his Wife of her Dower, for her Title begins with the Marriage, and ought to continue to the Husband's Death, which cannot be here, because of the Attainder which hath interrupted it; and the Pardon helps not, because it extends but to the Life of the Offender, but doth not take away the Attainder which hath barr'd her. 1 *Leon.* 3.

The Wife of a Person attainted of Treason, and pardoned, shall not have Dower.

A *Procedendo* upon an Aid-Praier in Dower, and a Writ of Seisin awarded, and the Return upon it. 4 *Leon.* Case 223.

A *Procedendo* upon an Aid-Praier in Dower, Seisin awarded and returned.

The Wife shall have Dower of her Husband's Lands after a Divorce *causa adulterii*. *Cro. Car.* 463.

Where she shall have Dower after a Divorce.

If the Wife elopes, and continues with the Ad-vowterer, and she be convict thereof, unless her Husband lets her live with him again, she loseth her Dower.

Where she elopes, she loseth her Dower.

13 C. 1. rap. 34.

After Verdict a Tenant was received to save his Term.

A Woman not dowable of Tithes before Stat. 32. § 8.

Dowable of Common Appendant, not of common in Gross.

Dower is favour'd in Law.

If there be a Reconciliation after Elopement the Wife shall be endowed.

Divorce *a mensa & Thoro*: She shall have her Dower.

After Verdict, and before Judgment, a Tenant was received to save his Term. *Barton & Ux' versus Leaver. Trin. 14 Car. 1.*

A Woman was not dowable of Tithes before the Statute of 32 H. 8. 24 Car. B. R. For before that few Tithes were in Lay-mens Hands, or were accounted a Lay-fee.

A Woman is dowable of a Common Appendant, but not of a Common in Gross. *Pasch. 24. Car. B. R.* For Common Appendant belongs to Lands and Tenements whereof she was endowable, and cannot be severed.

Dower is favoured in Law, and as it is favoured in it self, so is the Party that sues to recover her Dower favoured in her Proceedings in Law to recover it, as much as in Justice may be permitted, *Pasch. 24 Car. B. R.* For the Common Law doth extraordinarily favour and protect Widows and Orphans, as needing most Help.

If a Woman elope from her Husband she shall lose her Dower, but if she be afterwards reconciled to her Husband, and he afterwards dies so reconciled, she shall be endowed. *Dyer 106. Pl. 24.*

A Woman is divorced *a Mensa & Thoro*, she shall notwithstanding have her Dower; this being but a particular Divorce. *Co Litt. 235. a.*

Durelle of Imprisonment,

Durelle, what.

Durelle is where one is kept in Prison or restrained from Liberty contrary to Law; or threatened to be killed or maimed: If he in such Case make a Bond or Deed it is void; and in an Action brought upon it, he may plead this Matter.

How it is upon an Arrest.

But if a Man be arrested upon an Action at the Suit of another, tho' the Cause of Action be not good and true, if he make a Bond to a Stranger, it is not Durelle; but if he make it to the Plaintiff, it is. See *Terms of the Law, 163. b.*

None shall avoid his own Bond for the Imprisonment of another, but for himself only.

None shall avoid his own Bond for the Imprisonment or Danger of any other than of himself only. *Cro. Jac. 187. pl. 8.*

Duty,

A Thing that is known to be due by Law, and thereby recoverable, is a Duty before it is recovered; because the Party to whom it is due, hath a Power to recover it from him from whom it is due. Duty, what.

The Word *Forisfaceret* may create a Duty. The Word *Forisfaceret* may create a Duty.
Car. B. R. For the Party to whom a Thing is forfeited hath an Interest in the Thing forfeited, before he recovers it.

Easement,

See { Custom.
 { Prescription.
 { Unity of Possession.

A Easement is a Benefit which a Man may prescribe for in the Freehold of another, as belonging to an ancient House, or to his Land; and so also may Parishioners. Easement. what.

A Way of Ease may be extinguished by Unity of Possession; but a Way of Necessity, or a Water-course cannot. *Latch*, 154. See *Cro. Jac.* 170. pl. 10. What may be extinguished by Unity, and what not.

A Man may prescribe to have a Washing-Place in the Land of another. *March* 17. A Man may prescribe for a Washing-Place.

Also Inhabitants of a Town may have a Way over the Land of another to their Church. *Ibid.* Inhabitants may have a Church Way.

A confused Multitude cannot prescribe in a Matter of Interest; but in an Easement, as a Way to the Church, &c. they may alledge a Custom or Usage. 3. *Leon.* Case 254. A Multitude may prescribe in an Easement.

Easement.

For what all the Inhabitants may alledge an Usage.

How an Easement to be alledged.

All the Inhabitants of a Vill, or Parish, may alledge a Custom or Usage for a Gate-way, or a Water-course; and for such Things. 3 Mod. 294.

To alledge an Easement by *consuevit* only is the best Way; and Things of Necessity shall not be extinguished by Unity. 2 Keb. 291. pl. 71.

Ejectment.

See Delivery.
See Helne profits.

An Action of Ejectment, what it is.

An Action of Ejectment (which is now become the Common Action wherein Titles of Land are tried) lies to recover a Possession of Lands, &c. which is illegally kept from the right Owner; and in this Action he recovers Possession.

Who is an Ejector in Law.

An Ejector in Law is any Person that comes upon any Part of the Land, &c. in the Ejectment-Lease, although it be by Chance, and with no Intent to disturb the Lessee of the Possession, next after the Sealing and Delivery of the Ejectment-Lease, where such Lease is necessary: And such an Ejector is a good Ejector to bring an Action of *Ejectione firma* against, to try the Title of the Land in Question. Mich. 22 Car. B. R. 1650. B. S.

Lessor of the Plaintiff in an *Ejectione firma*, supposed to be alive at the Time of the Action brought.

If one declare upon a Lease in an *Ejectione firma*, and that by virtue of that Lease he was in Possession of the Lands thereby let unto him, until that he was ejected by the Defendant, it is supposed that the Lessor, that made the Lease unto him, was alive at the Time when he brought his Action, Mich. 22 Car. B. R. For otherwise the Lessee might have no Cause of Action; for his Lease might possibly be determined by the Death of the Lessor.

An Ejectment is either actual, or by Implication of Law.

An Ejectment or an Ouster is either an actual Ejectment, as when the Lessee is actually put out of the Land let unto him, or else it is an Ejectment by Implication of Law, viz. where such an Act is done by one which doth amount to an Ejectment, although he do not really enter upon the Land let, and oust the Lessor. Pasch. 22 Car. B. R.

So likewise in Case where an Infant is Lessor, the Declaration ought to set forth a Lease by Deed, and also a Rendering some Rent, tho' it be but 5 s. otherwise the Lease will be void; whereas this Lease so declared upon, and which must be confessed by the Defendant in his Rule of Lease, Entry and Ouster, is not void, but voidable; and although this is really but a fictitious Lease, and only to try the Title, yet it must be a good Lease in Law; if it is not, the Action will not lie upon it.

How the Declaration ought to be when an Infant is Lessor.

Although in an *Ejectione firmæ* there be a Verdict, and a Judgment against the Plaintiff, yet the Plaintiff may bring another Action of Trespass and Ejectment for the Land. *Trin. 23 Car. B. R.* He may bring divers Actions one after another if he please, for a Judgment in that Action is not final; for it is but to recover the Possession of the Land, and is not like an Assize, or a Writ of Right, &c. wherein the Title of the Land is primarily concerned.

Plaintiff may bring another Action after Verdict and Judgment against him.

One who hath Title to the Land in Question in an *Ejectione firmæ*, may upon Motion to the Court be made a Defendant in the Action with the Tenant in Possession, that he may thereby defend his Title; and he must also join in the Rule to confess the Lease, Entry and Ouster. *Mich. 23 Car. B. R. Vide ut infra*, according to the new way of Practice.

He who has Title to the Land may be made a Defendant in the Action.

He who is in any Part of a Messuage, viz. in the Barn, Stable, Stall, &c. after the Lease of Ejectment sealed and delivered to try the Title of the Messuage, is an Ejector for the whole Messuage; this was before the Rule to confess Lease, Entry and Ouster was put into Practice. *Pasch. 24 Car. B. R.* For a Messuage is an entire thing, and is not to be recovered *per partes*.

Whether he who is in any Part of the Messuage is an Ejector for the whole.

A Messuage cannot be recovered *per partes*.

In every Action of Trespass and Ejectment, where by the Rule of the Court the Defendant shall acknowledge Lease, Entry and Ouster, for so much of the Premises mentioned in the Declaration, as is in the Possession of the said Defendant, or his Under-Tenants, the Attorney of the said Defendant shall forthwith deliver to the Plaintiff's Attorney a true Note in Writing of the Tenements so being in the Possession of the said Defendant or his Under-Tenants. *Per Cur. Trin. 16 Car. 2. Quare*, if now necessary.

Defendant's Attorney to deliver to the Plaintiff's a Note in Writing of all the Tenements in the Possession of the Defendant.

Ejectment, and declares of a Lease for five Years, where the Lessor had only a Term for three Years, and seems to be ill after Verdict found of three Years. *2 Lev. 140.*

Declares of a Lease for five Years, and Verdict found for three, ill.

Declares of a Lease by A. B. and C. and of another Lease by A. and B. of the same Close for the same Term, and good. *Id. 117.*

Two Leases from several Persons of the same Land, and good.

Ejectment of the tenth Part of a Messuage in *D.* and *S.* where all the tenth Part lay in *D.* not good.

the Evidence did not maintain it, being precisely of a tenth Part.
2 *Lev.* 334. 335.

Aliter, of one Acre of Land in *D.* and *S.* and the whole lies in *D.*

Ejectment of one Acre in *D.* and Part lies in *S.* good for so much as lies in *D.*

So if Ejectment be brought for a whole Acre, and he has Title but to a fourth Part, he shall recover the fourth Part.

So also of a hundred Acres, and Title but to forty, he shall recover the forty.

The Plaintiff may release his Demand to Part, and take Judgment for the Residue.

If the Ancestor of the Heir who brings an Ejectment dies after the Action brought, the Heir shall not recover.

How to proceed to recover Possession upon an Ejectment.

concerned : But it is sufficient to give Notice to the Tenant in Possession of the Land in Question, by delivering to him a Copy of the Declaration in Ejectment : For the Possession of the Land is primarily in Question in this Action, and is to be recovered : Which Possession doth properly concern the Tenant of the Land, be the Title in whom it will, though the Title of the Land doth also come in Question, and is tried collaterally.

How, in case of an empty House.

Person who was last in Possession is run away, and you cannot find any Person to deliver the Declaration to : Then you must proceed the old Way, by sealing a Lease upon the Ground, and give Rules to plead. (But you cannot have Judgment against the casual Ejector without a

The new Practice of delivering of Declarations in Ejectment.

Ejectment of the tenth Part of a Messuage in *D.* and *S.* and it appeared upon Evidence, that the whole tenth Part lay in *D.* and no Part thereof lay in *S.* And the more Part of the Justices held that

But they allowed, if one bring an Ejectment of one Acre of Land in *D.* and *S.* and the whole lies in *D.* he shall recover.

So where a Man brings Ejectment of one Acre in *D.* and Part of it lies in *S.* he shall recover for such Part as lies in *D.* *Plowd. Com.* 429. b.

Also, if a Man has Title to a fourth Part of an Acre only, and he brings Ejectment for the whole Acre, he shall recover the fourth Part. 3 *Cre.* 13.

Ejectment of an hundred Acres, and proves Title by a Lease of forty Acres, he shall recover the forty Acres. See 3 *Lev.* 334. 335.

In Ejectment for an hundred Acres of Bog, and other Things, the Plaintiff may release his Demand to them, and take Judgment for the Residue. *Raym.* 395.

If the Heir brings an Ejectment, and his Ancestor dies subsequent to the Action, he shall not recover, because every one shall recover only according to the Right which he hath at the Time of bringing his Action. *Id.* 463.

If one seal a Lease of Ejectment upon the Land to try a Title, it is not necessary to give Notice of the sealing of this Lease unto him whose Title is concerned : But it is sufficient to give Notice to the Tenant in Possession of the Land in Question, by delivering to him a Copy of the Declaration in Ejectment : For the Possession of the Land is primarily in Question in this Action, and is to be recovered : Which Possession doth properly concern the Tenant of the Land, be the Title in whom it will, though the Title of the Land doth also come in Question, and is tried collaterally.

But now by the new Way of Practice, it is not usual to seal any Lease of Ejectment at all in any Action of Trespass and Ejectment, except only where a House or Land is empty ; and that Per-

son who was last in Possession is run away, and you cannot find any Person to deliver the Declaration to : Then you must proceed the old Way, by sealing a Lease upon the Ground, and give Rules to plead. (But you cannot have Judgment against the casual Ejector without a Motion for that Purpose, after the Rules for Pleading are out.) But now by this new Practice, which is to deliver a Copy of the Declaration in Ejectment

Ejectment to the Tenant in Possession, or his Wife (a Delivery to a Son, Daughter or Servant, not being good), there must be upon such Copy, an Endorsement or Subscription in *English*, acquainting the Tenant what the Thing is; which Endorsement or Subscription, or the Substance thereof, must be read to the Tenant, by the Person who delivers the same, at the Time of the Delivery thereof: Which Person must also tell the Tenant, That unless he forthwith shall procure some Attorney of the King's Bench, or other Court where his Action is brought, to appear for him, and defend his Title (if he hath any), he shall be turned out of Possession; or Words to that Effect. Now if the Tenant doth not appear the Beginning of the next Term, then upon Affidavit made of the Delivery of a Copy of the Declaration thereunto annex'd unto the Tenant or his Wife, and reading of the Indorsement or Subscription as aforesaid, or acquainting of them with the Contents thereof, the Court will make a Rule for the Tenant to appear, and plead by a certain Day: At which Time, if the Tenant appears, he must by his Attorney file common Bail, and draw up a Rule to confess Lease, Entry and Ouster, and leave it at a Judge's Chamber, and give Notice thereof to the Plaintiff's Attorney to proceed, if he thinks fit: But if the Tenant in Possession doth not appear, then after the Day appointed by the Court for the Tenant to appear and plead, which appears by the Rule, Judgment will be entred up against the casual Ejector by Default; and the Tenant in Possession will be by an *Habere Facias Possessionem* upon such Judgment, turned out of his Possession.

The Manner of delivering Ejectments.

When the Tenant must appear and confess Lease, Entry and Ouster.

When Judgment will be entred against him.

casual Ejector by *Habere Facias Possessionem*

No Person shall be admitted to be Defendant in Ejectment with the Tenant in Possession, but he that hath been in Possession, or receives the Rents. *5 W. & M. B. R.*

Who shall be admitted to be joined with the Tenant.

The Court will not suffer the Plaintiff to amend his Declaration in Ejectment after Delivery, and before Plea pleaded: But the Plaintiff must stand and fall by his Declaration as it is, or deliver a new Declaration. *Trin. 5 W. & M. B. R.*

The Court will not suffer the Plaintiff to amend his Declaration in Ejectment.

Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the mesne Profits from the Time of the Defendant's Entry laid in the Declaration; and at the Trial, it is not necessary to prove any Entry of the Defendant, because the Defendant doth in the Rule confess Lease, Entry and Ouster; and also an Entry upon the Plaintiff by the Defendant, is found by the Verdict against him. And this Action may be brought, either by the Plaintiff in the Action, or by the Lessor of the Plaintiff:

The Lessor of the Plaintiff, or the Plaintiff, may bring an Action for the mesne Profits.

And where the Plaintiff brings it, he need only at the Trial to produce his *Postea* of his Recovery: But

What the Plaintiff is to do and what the Lessor.

where the Lessor brings it, he must prove his Title over again, if it be insisted upon on the other Side, or else he will be nonsuited.

Where there are two Defendants, one may be found guilty, and the other not guilty.

8 & 9 W. 3. cap. 10.

But now by the Statute of 8 & 9 W. 3. cap. 10. unless the Judge, before whom the Cause was tried, certifies immediately after the Trial in open Court, that the Plaintiff had a reasonable Cause for the making such Person Defendant in the Action, the Defendant shall have his Costs, as if a Verdict had been given against the Plaintiff.

A Man is made Plaintiff without his Knowledge.

He shall be discharged.

discharged: Because it is very unreasonable to punish an innocent Person. 34 Car. 2. B. R. And so it was adjudged in one *Wright's Case* in B. R. 5 Anne.

An *Habere Facias* cannot be sued out on a Judgment in Ejectment above a Year, unless revived by *Scire Facias*.

an *Habere Facias Possessionem* was sued out and executed after a Year and a Day, without a *Sci. Fa.* a Writ of Restitution was awarded by the Court, *Quia erronee emanavit.* Mich. 1 Anne, *Withers's Case*.

How to declare in an Ejectment.

A Rectory, what. An Ejectment lies of it.

2 Leon. Case 13. for which an Ejectment will well lie.] And then say, so many Messuages, so many Cottages, so many Acres of Land, so many Acres of Meadow, so many Acres of Wood, &c. cum Pertin. in D. &c. which must be the Parish where the Lands in Question do lie.

An Ejectment will not lie upon a Lease of Tithes without Deed.

Where to lay it.

4 & 5 Anne.

Ejectment of a Manor and an House only found.

Jury find the Defendant not guilty, quoad an House and some Land, and Part of the Manor: The Court was in Doubt what Judgment to give. Latch 61, 62.

If there be two Ejectors named in an *Ejectione firme*, one of them may be found guilty of the Trespass and Ejectment; and the other, as the Case may fall out, may be acquitted. And yet the Action is well brought: Because there is a Trespass and Ejectment found against one of the Defendants.

But now by the Statute of 8 & 9 W. 3. cap. 10. un-

A Man is made Plaintiff in Ejectment without his Knowledge, and the Plaintiff becomes nonsuit, and afterwards Execution is sued out against him. If it appears by his Oath, that he was made Plaintiff without his Knowledge or Order, he shall be

The Court will not grant an *Habere Facias Possessionem* upon a Judgment in Ejectment above a Year's standing, until it is revived by *Sci. Fa.* And of this Opinion were the Court after Argument on both Sides, and great Deliberation. And where

In every Ejectment the Plaintiff ought to set forth in his Declaration, if it be of a Manor, then *Manerium de D. cum Pertinentiis*: Or if of a Rectory, *Rectorium de D. &c.* [A Rectory is a Thing which consists of divers Things, as Glebe, Tithes, &c.

[Upon an Ejectment upon a Lease of Tithes it must be shewn to be by Deed (because Tithes cannot pass without Deed) otherwise it is naught. Cro. Jac. 613. pl. 3] But the Demise may be said to be made in some other Parish in the County, to the End that there might be a good Venue. But now by the Statute of 4 & 5 Anne it is enacted, That every Venue for the Trial of any Issue shall be awarded of the County wherein the same is to be tried.

Note, Where the Ejectment was *de Manerio de S. only*, without saying of any Land: and the Jury find the Defendant not guilty, quoad an House and some Land, and Part of the Manor: The Court was in Doubt what Judgment to give.

Ejectment.

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An Ejectment was brought for Non-payment of Rent; the Court was moved to stay Proceedings upon Payment of the Rent and Costs to be adjusted by the Secondary, which the Court granted: And also ordered a new Lease to be executed at the Defendant's Costs. *Mich. 8 W.*

Cause stayed upon Payment of the Rent and Costs:

And a new Lease was ordered.

You may lay as many Demises in a Declaration in Ejectment as you please: And if the Plaintiff recovers upon one of them, it is sufficient *pro tanto*.

Several Demises may be laid in one Declaration, and how to be.

As for the Purpose for Lands in Gavelkind, the Plaintiff declares, That *A. B. C. D. &c. 10 Dec. &c.* did demise to him an hundred Acres of Land in *D. in Com. Kant. in forma sequen. videl' A. B.* demised to the Plaintiff one third Part, *Habend. & Tenendum, &c.* And also that *C. D.* demised to him one sixth Part of the said hundred Acres of Land, *Habendum, &c.* And also that the said *E. F.* demised to him one third Part: And also one sixth Part of the said hundred Acres of Land, *Habendum, &c.* By Vertue of which several Demises he entred and was possess'd, *&c. Pasch. 1 Jac. 2. R. Rot. 332. B. R. 3 Lev. 117.*

It lies of a standing Pool. *Yelv. 143. Note,* If the Land under Water belongs to the Plaintiff, he may bring his Ejectment; but if the River only, then his Action upon the Case. *Pasch. 23 Car. B. R.* For if the Thing be uncertain, the Sheriff cannot, if the Plaintiff recover, know of what to deliver the Possession upon the Writ of *Habere Facias Possessionem*; and consequently there can be no Fruit of such an Action, which the Law always labours to prevent.

It lies of a standing Pool.

If the Land under Water belong to the Plaintiff, he may bring Ejectment; if the River only, his Action on the Case.

An Ejectment ought to be brought for a Thing that is certain. It doth not lie *de Pecia Terræ. Mo. 564. nor de Uno Clauso. Cro. Eliz. 339.* altho' it hath a certain Name: But it ought to be of so many Acres of Land. And although it is said, containing three Acres of Land; yet not having said what Sort of Land, as Meadow, Pasture, &c. it it naught. *11 Rep. 55. a. But Cro. El. 235.* held it to be good.

Of what an Ejectment lies not.

Not lie *de Pecia Terræ:*
Nor *de Uno Clauso.*

Ejectment of a Garden called *M. Garden*, and a Meadow called *Dale Meadow*; a Judgment was given in the King's Bench, but reversed in the Exchequer-Chamber. *Cro. El. 339. pl. 3.*

Lies not for *Dale-Meadow,* nor *M. Garden.*

Lies not *de una virgata terræ. Ibid.*

Nor *de virgata terræ.*

Also it doth not lie *de communia Pasturæ*; nor of a Fair: But *de Manerio de B. cum Pertinen.* if the Fair is appurtenant, is good: It doth not lie for a Croft; for the Uncertainty to make Execution upon. *Cro. Car. 492. pl. 17.*

Nor *de Communia Pasturæ:*
Nor of a Fair.

It lies not *de Pannagio*; nor of the fourth Part of a Meadow. *1 Lev. 213.* not shewing how many Acres the Meadow contains.

Not *de Pannagio,* nor of the fourth Part of a Meadow.

Nor *de uno Repositorio*, without an *anglice* for a Warehouse. *March 138.* The Court was divided upon it. *Cro. Car. 554. pl. 10.*

Nor *de uno Repositorio.*

Nor de uno Messuagio
sive Tenemento.

But how to be re-
trieved.

Lies of a Cottage.

It lies for a Curtilage,
for a Stable, an Orchard,
Cottage.

For a Vestry: For
two Closes called G.

It lies for a Church,
for a Chapel.

For Tithes, how.

lity of the Tithes whereof Judgment may be given. 11 Rep. 25. b. March 22. It lies of so many Loads of Tithes of Wheat, and so many of Barley, being severed from the nine Parts. Cro. Car. 301. pl. 4.

De uno Cubiculo.

Of Land and a Coal-
pit in it.

Of a Coal-Mine:
Of a Boilery of Salt.

Ejectment of two Closes
called A. & B. containing
three Acres, is good;
though the Closes con-
tain more Acres.

De una Domo.

De uno Pomario.

Not de Piscaria in a
River.

But it lies de Terra Aqua
co-operta.

Nor of forty Acres of
Land, Meadow and Pa-
sture.

Nor de uno Messuagio sive Tenemento; but if there be Land mentioned in the Declaration, and a Verdict for the Plaintiff, then if the Plaintiff will agree to release his Damages and Costs, he may have Judgment for the Land. 3 Leon. Case 306. See Cro. El. 186. pl. 8. See Noy 86.

It lies of a Cottage. Cro. El. 818. pl. 9. Because it is a Word of a certain Signification. Pasch. 1650. 12 Maii B. S.

Ejectment lies for a Curtilage. 4 Mod. 1. It lies de uno Stabulo, de uno Pomario, uno Cotagio. 1 Lev. 58. It lies de quodam loco vocat' le Vestry of such a Parish, & de duobus clausis vocat' Gabels. 3 Lev. 96, 97. to Fol. 201.

Ejectment lies of a Church, as de una domo vocat' the Parish-Church of B. but not of a Chapel; but it ought to be by the Name of an House. 11 Rep. 25. b.

For Tithes it must not be de omnibus & omnimodis decimis in W. without saying Garbarum, Fæni, Lanæ, Agnorum, or some Certainty of the Nature or Quality of the Tithes whereof Judgment may be given. 11 Rep. 25. b. March 22. It lies of so many Loads of Tithes of Wheat, and so many of Barley, being severed from the nine Parts. Cro. Car. 301. pl. 4.

It lies de uno Cubiculo, which the Court said was a better Word than Camera. 3 Leon. Case 275.

Ejectment of Land, and a Coal-pit in the same Land, is good, it being a personal Action, and nothing certainly demanded. Cro. Jac. 21. pl. 1.

It lies of a Coal-Mine, and of a Boilery of Salt. Cro. Jac. 150. pl. 9. Noy 121.

Ejectment of two Closes of Land called A. & B. containing three Acres, it is well enough; for it is certain enough what the Nature of the Land is, and though the Closes contain more, yet he shall recover the whole Closes. Cro. Jac. 435. pl. 4. 436.

It well lies for both, though moved that a Precipe lies for neither. Cro. Jac. 654. pl. 3. Cro. El. 854. Noy 37.

It lies not de Piscaria in a River, because it was not said, terra aqua co-operta. Cro. Car. 492. pl. 17. But an Affize may be brought for it.

Nor of forty Acres of Land, Meadow and Pasture. Cro. Car. 573. pl. 13.

Ejectment.

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It lies *de uno Stabulo*, or where-ever the Thing is so certain, that the Sheriff may do Execution of it. 1 *Keb.* 236. pl. 65.

Lies not *de una Pecia Terræ vocat' Minchin Fur-long.* Moor, Case 976.

Lies *de Coquina.* Noy 109.

Lies not of a Water-course, because it is not firm but always current. *Latch* 153.

It lies *de uno Stabulo*, and why.

Lies not *de Pecia Terræ.*

Lies *de Coquina.*

Nor of a Water-course.

If a Man brings an Ejectment, and lays the Demise (suppose) 1 *Decembris*, and he had then a Title, and the Defendant confesseth Lease, Entry and Ouster, and gives in Evidence a Title to himself; which commenc'd 1 *Jan.* Here the Plaintiff shall recover his Damages from the first of *December* to the first of *January*, but shall not recover the Possession: Because it appears by the Verdict that he had no Title to the Land the first of *January.* *Whitfield's Case* 5 *Annæ B. R.*

Where the Plaintiff shall recover Damages, but not the Possession.

A Judgment was obtained in an Ejectment by Default, and a Writ of Possession executed; and the Tenant and all his Family turned out of Possession; and the Tenant was immediately re-admitted upon his attorning Tenant: Afterwards another Person serves the Tenant with a Declaration in Ejectment, and the Tenant attorns to him; and the first Man who recovered, sued out a Writ of Possession upon his Judgment, and executed it; but it was set aside: Because the Plaintiff had upon his first Execution the Effect of his Judgment, and might have kept the Possession when it was delivered to him by the Sheriff. 5 *W. & M.*

Where Judgment is had, and a Writ of Possession executed.

And the Tenant afterwards re-admitted.

Another Ejectment brought, the Tenant attorns.

The first Man sues out another Writ of Possession, and naught.

A Rent granted with a *Proviso*, That if it be not paid, then that he may enter and retain the Land, *quousque, &c.* the Grantee hath here such an Estate as will maintain an Ejectment. 1 *Lev.* 170.

What Estate will maintain an Ejectment.

Where a Declaration in Ejectment is made (for the Purpose) of *Easter Term*, and the Demise is laid after the End of *Easter Term*, and before the Effoin-Day of *Trinity Term*; and also delivered before the Effoin-Day of *Trinity Term* to the Tenant in Possession; yet this shall be good, though the Demise is laid after *Easter Term*: Because when the Tenant in Possession appears, he must be made a Defendant, and accept a Declaration of *Trinity Term*, and plead thereunto not guilty; and at the Trial confess Lease, Entry and Ouster, otherwise there will be Judgment against the casual Ejector: So that when the Declaration to which the Tenant is made a Defendant is made of *Trinity Term*, that is then after the Demise, and so it is well. 5 *W. & M.*

Where the Demise is laid before the Time in the Ejectment-Declaration.

If the Defendant doth not at *Nisi Prius* confess Lease, Entry and Ouster, according to the Rule, then the Plaintiff must be nonsuit; but there must not be any Costs taxed against him: But the Rule

How to get Costs upon a Nonsuit for not confessing the Lease, Entry, &c.

for

for confessing of Lease, Entry and Ouster, must be carried to the Secondary, who taxes Costs upon it, which Costs must be demanded of the Defendant, by some Person having an Authority from the Plaintiff's Lessor for so doing; and if the same are not paid, the Court will, upon an Affidavit and Motion, grant an Attachment against the Defendant. How to get Possession afterwards, see Title *Postea*.

An Ejectment of the Demise of an Infant void without mentioning the Rent.

In an Ejectment-Lease where there is no Rent mentioned to be reserved, and the Lessor is an Infant, it is void. 2 *Leon. Case* 275. *Fol.* 218. *Mo. Case* 248.

A Mistake of a Year shall not hurt a Declaration in Ejectment.

In an Ejectment the Demise laid 21 *Oct.* 4 *Jac.* and that *postea* 21 *Oct.* *Anno* 3. *supradict.* he ejected him: The Words *Postea eodem* 21 *Oct.* he ejected him, which is good without mentioning any Year, and the mentioning of the Year is idle. *Cro. Jac.* 154. *pl.* 4.

Intravit for *intraverunt*, amended in a Declaration after Verdict.

Ejectment against two; it was said, that they *intravit* for *intraverunt*, & the Plaintiff *ejecit*; and afterwards, although the Bill upon the File was so, yet after Verdict it was ordered to be amended. *Cro. Jac.* 306. *pl.* 1.

The Privileges of the University of Oxford not allowable in an Ejectment.

The Privilege of the University of Oxford not to be sued out of their own Court was not allowed in an Ejectment, though it may be in Covenant; Because there only Damages are recovered, and in an Ejectment the Possession is recovered. *Cro. Car.* 87. *pl.* 9. 88.

Election.

See { *Grants.*
 Heriot.

Election, what.

Election is where a Man is left to his own free Choice, to take or do one thing or another, which he pleaseth.

Either Trespass on the Case or *Vi & Armis* may be brought for a Rescous.

An Action of Trespass upon the Case, or an Action of Trespass *Vi & Armis*, may be brought against one that doth rescue a Prisoner, at the Election of the Party who is damnified by this Rescous. *Pasch.* 24 *Car. B. R.* Yet the Judgments are different in these two Actions; for in Trespass *Vi & Armis* the Judgment is entred with a *Capiatur pro fine*, for the Disturbance of the publick Peace by the Rescous; but in a bare Action on the Case, the Judgment is entred, that the Defendant be in *Misericordia*.

An Action upon the Case, or an Affize, doth lie against him that doth surcharge a Common at the Election of him that is injured thereby. *Mich.*

Either Case or Affize will lie for surcharging a Common.

1649. B. S. For it is all one whether the Plaintiff recover the Thing for which he sues, or Damages for his Prejudice suffered by the Loss of it.

Where nothing passeth to the Feoffee or Grantee, before Election, there the Election must be made in the Lives of both the Parties; but when an Estate or Interest passeth presently, there Election may be made by them or their Heirs. 2 *Rep.* 36, 37.

Where nothing passeth to the Grantee before Election, it must be made in the Lives of both Parties.

So where the same Thing passeth presently to the Donee or Grantee, and the Donee or Grantee hath his Election in what Manner to take this; here the Interest passeth presently, and the Executors or Heirs may have their Election when they will. *Co. Litt.* 145. a. *Moor* 85.

Otherwise where an Interest passeth presently.

Condition to render an Account before the 25th of June, or to render himself to Prison; the Election is to the Obligor. 3 *Lev.* 137.

Condition to account by a Day, or render himself to Prison; the Obligor has the Election.

Where an Election is given to several Parties, the first Election by either of the Parties shall stand. *Moor* 241.

If Election be to several, the first Election shall stand.

When an Election is of two several Things, he which is the first Agent shall have the first Election; as if 20 s. or a Robe be granted, the Grantor shall have his Election, which he will give, for he is to do the first Act, and either the 20 s. paid, or Robe delivered, is a Performance of the Grant. *Moor* 241.

If Election be of two several Things, the first Agent shall have the first Election.

But where there is a Lease rendring Rent, or a Robe, here the Lessee shall have his Election to pay which he pleaseth. *Ibid.*

Where the Lessee shall have his Election.

But if I give 7. s. one of my Horses, here 7. s. shall have his Election, for 7. s. is the first Agent, he may either take or seize one of them when he pleaseth. *Ibid.*

If I give 7. s. one of my Horses, he shall have his Election.

A Grant of twenty of the best Trees in his Wood to be taken in three Years; the Grantor can cut none in the mean time, at least without having made Request to the Grantee to make Election. 2 *Lev.* 54.

A Grant of twenty of the best Trees in his Wood to be taken in three Years; Grantor can cut none in the mean time.

If the Plaintiff amend his Declaration, it is at his Election either to pay the Defendant Costs for this Amendment, or to give the Defendant an Imparlance to the next Term after the Amendment; and the Defendant cannot hinder this Election. 7 *Feb.* 1650. For the Defendant is at no Prejudice by it, because he is recompensed by the Costs; and therefore it is no Reason that the Plaintiff should be delayed by an Imparlance.

If Plaintiff amend his Declaration, he may either pay Costs or im-
parl.

A Grant shall be taken most strongly for the Grantee to have his Election.

When a Man hath his Election to do one thing or another, he must do one.

Where a Man hath an Election to do one of two things, if one becomes impossible to be done, he must do the other.

Where a Man may bring Waste or Trover.

Waste, or else an Action of Trover and Conversion for the Trees: For though it be most for his Advantage to bring an Action of Waste, yet he may wave that Advantage if he please, for none is prejudiced thereby but himself; but he cannot bring both.

Where several Damages found against several Trespassors, how the Judgment shall be.

commits the Battery, the other the Imprisonment, and the third takes the Goods, all at one Time; all are guilty of the whole, and shall be all charged with the whole Damages; and if several Damages had been given, the Plaintiff should have but one of them at his Election. 3 Lev. 324. See Title Damages.

Upon Grants or Demises of Estates in the Disjunctive.

Or an Election to be made.

It is a Rule, That every Grant shall be taken most strong for the Grantee to have his Election. Litt. Rep. 371.

Where a Man hath an Election to do one thing or another, if he doth neither of them, his Bond is forfeited. Cro. Jac. 594. pl. 15.

Where a Man hath an Election to do one of two things, if he cannot by any Default of a Stranger, or of himself, or of the Obligee, or of the Act of God, do the one, he must at his Peril do the other. Moor Case 892.

Where Waste is committed by cutting down of Trees, and carrying them away from thence; it is at the Plaintiff's Election to bring an Action of

Waste, or else an Action of Trover and Conversion for the Trees: For though it be most for his Advantage to bring an Action of Waste, yet he may wave that Advantage if he please, for none is prejudiced thereby but himself; but he cannot bring both.

Where Damages are found severally against three several Trespassors, the Plaintiff shall have but one of them, and may make his Election *de melioribus dampnis*: For the Plaintiff having charged them jointly with all the entire Matter, if one

commits the Battery, the other the Imprisonment, and the third takes the Goods, all at one Time; all are guilty of the whole, and shall be all charged with the whole Damages; and if several Damages had been given, the Plaintiff should have but one of them at his Election.

Upon Grants and Demises of Estates, where the Thing granted is in the Disjunctive, or an Election to be made. See for this Matter fully in 2 Rep. from 35. to 37. in Sir Rowland Heyward's Case, and in the Lord Cromwell's Case, from 70. to 82.

For Elections see the Case of Fines, 3 Rep. 84, 85, &c. and Moor, Case 215, 247.

A general Entry is no Determination of an Election.

Where a thing may be void, or not, at Election.

Where nothing passes till Election.

What will determine an Election.

Although a Lessee enters generally, yet he may elect to take by Demise, or Bargain and Sale. 2 Rep. 37.

Where a Thing may be void, or not, at the Election of him whom it concerns. Hob. 166.

Where the Election creates the Interest, nothing passes till Election; and where no Election can be made, no Interest will arise. Hob. 174. See Title Grants.

An Act becoming void will determine an Election. Hob. 152.

Election.

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Where the Condition is in the Disjunctive, before the Day of the Performance the Election is to the Defendant ; but if he makes Default at the Day, the Election is to the Obligee. 1 Leon. 70. See Moor, Case 215.

Where the Election is to the Defendant, where to the Plaintiff.

A Feoffment made of an House, and three Hides of Land in E. and also of seventeen Acres of Wood in the B. which B. contains a thousand Acres : An Heir in the third Discent from the Feoffee, elects in a Corner of the great Wood in the B. seventeen Acres, and fences it in : And adjudged against him, that the Election came too late. See the Case, Moor, Case 215. See also in Moor, Case 247. that the Election ought to be made by the Feoffee or *Cestuy que Use*.

A Grant to a Man and his Heirs of seventeen Acres of Wood out of a great Wood of a thousand Acres ; how the Election, and when to be.

Where a Term is devised to an Executor ; by the better Opinion, until Election be made the Executor shall not be said to have it as a Legatee. 1 Leon. Case 298.

Where the Executor shall have a Term as Executor, and where as Legatee.

Elegit.

See { Execution.
 { Extent.

An Elegit is a judicial Writ which issues out upon a Judgment recovered for Debt or Damages, or upon a Recognizance in any Court. Co. Litt. 289. b. By which Writ the Plaintiff elects omnia bona & catalla of the Defendant, præter boves & atros de caruca sua ; and also a Moiety of all the Lands which the Defendant had at the Time of the Judgment recovered, or at any Time afterwards, to hold the Goods as his own Goods, and the Lands, until he is satisfied. Note, This Writ is given by the Statute of Westm. 2. cap. 18. 13 E. 1. cap. 18.

An Elegit, what.

13 E. 1. cap. 18.

Upon a *Testatum* an Elegit lies into the Principality of Wales, or into the County-Palatine of Chester. Hill. 22 Car. 1. B. R.

It lies into Wales, and the County-Palatine of Chester.

Where there are two Judgments, and the last Judgment is executed by *Elegit*, and the Plaintiff in Possession ; yet the Plaintiff in the first Judgment may afterwards sue out an *Elegit* upon his first Judgment, and have the very same Land delivered to him as was delivered upon the *Elegit* upon the second Judgment ; and he shall recover the same from him, although he had the prior Extent.

Two Judgments, and the last executed by *Elegit*, yet the Plaintiff in the first Judgment may likewise sue out an *Elegit* upon it, and have the very same Land delivered to him.

Where

What Evidence is sufficient to prove a Seisin upon an *Elegit*.

upon an Ejectment brought to recover the Possession, it will be sufficient for the Plaintiff to give in Evidence the Copy of the Judgment, *Elegit*, and Inquisition thereupon filed, in which Inquisition the Jury found him seised; and he shall not be obliged to prove the Seisin of the Party at the Time of the Judgment: But if he was not seised, that must be shewn on the other Side.

The Plaintiff may have another *Elegit* after Goods are levied in Part, but not where Lands are.

A Man may have another Execution after a *Nihil* returned upon an *Elegit*.

How Restitution of a Term must be upon an *Elegit*, and how upon a *Fi. fa.*

A Man may award as many *Elegits* into as many Counties as he thinks fit.

Where the Plaintiff may upon the Return of an *Elegit* pray another *Elegit* into the same County.

When he must pray it.

have it, he never

Elegit lies after an Execution, without Satisfaction.

Conuzor dies in Execution, there may be Execution against his Lands and Goods.

How the Sheriff is to make his Return upon an *Elegit*.

Because he should return a Moiety of each. 1 *Lev.* 160. And this may be avoided upon Evidence in an Ejectment for the Lands. See *postea*.

Where in an Inquisition upon an *Elegit* it is found, That the Defendant was seised of the Land at the Time of the Judgment entred into; there,

Where an *Elegit* is sued out upon a Judgment, the levying of the Goods for Part is no Impediment, but that he may have another *Elegit pro Residuo*, and take the Lands: But when Lands are once taken, and the Writ returned and filed, he shall have no other Execution. 1 *Lev.* 92.

Upon a *Nihil* return'd upon an *Elegit*, the Plaintiff may have a *Ca. sa.* or a *Fi. fa.* 1 *Leon.* 176. Case 247.

A Term is delivered to the Plaintiff upon an *Elegit*, which is afterwards reversed; Restitution shall be of the Term; but upon a *Fi. fa.* it must be of the Money. *Cro. Jac.* pl. 4.

A Man may upon the Judgment Roll, immediately after the Entry of the Judgment, award as many *Elegits*, into as many several Counties as he pleases, and may execute all or any of them, as he thinks fit, and where he pleases. See *Cro. Jac.* 246. pl. 4.

The Sheriff delivers some Lands upon an *Elegit*; the Plaintiff came into Court and prayed another *Elegit* in the same County, and had it; and whether it were void or no? *Curia*. If it appears that the Plaintiff had accepted the first Land upon the Delivery of the Sheriff, he can't take a new *Elegit*; if he doth, it is void: But if he comes at the Return of the first *Elegit* and prays a new *Elegit*, he shall have it, he never having accepted of the first. *Cro. El.* 310. pl. 19.

If the Party dies in Prison, so that there is no Execution with Satisfaction, the Plaintiff shall have an *Elegit* afterwards; because he cannot have Satisfaction according to his first Election: And if the Conuzor of a Statute dies in Execution, the Conuzee shall have Execution of his Goods and Lands. 5 *Rep.* 86. b. 87.

If upon an Inquisition upon an *Elegit*, the Sheriff returns the Defendant to have twenty Acres of Land in A. and twenty in B. and he delivers the twenty Acres in B. for the Moiety; it is naught:

Where the Sheriff delivers the Moiety of the Rent without the Land, so as there is not any Reversion, it is but a Rent-Seck; and a bare Rent cannot be delivered *ut liberum Tenementum*. Cro. El. 656. pl. 20.

An *Elegit* executed in London by a Serjeant at Mace, and held good. 4 Rep. 65.

The Sheriff returns upon an *Elegit* that the Party hath not any Lands but only within the Liberty of B. and that J. S. Bailiff there, hath the Execution of all Writs, who enquired and returned an Extent, and the Bailiff delivered the Moiety to the Party: And adjudged, that a Bailiff of a Liberty may make such Inquisition and Extent by Warrant from the Sheriff; also that the Jury shall extend the Land; and the Bailiff where there is a Liberty, and the Sheriff where there is none, shall deliver the Moiety, and not the Jury. Cro. Car. 319. pl. 13.

The Defendant may enter upon the Plaintiff after Satisfaction received upon an *Elegit*; but not in case of an Extent upon a Statute. 4 Rep. 67. b. See Title Execution. See March Rep. 207, 208, &c.

If Tenant by *Elegit*, Statute-Merchant or Staple, be put out of Possession by the Heir at Law or Reversioner, he may have his Action of Trespass, or re-enter and hold over, till satisfied. 4 Rep. 28. b.

Where a Man hath Lands in more Counties than one, if the Plaintiff awards an *Elegit* upon the Record of the Judgment but to one County, and extends the Lands upon this *Elegit*, and afterwards files it, he is barred for ever, and cannot sue out an *Elegit* into the other Counties: But if upon the Roll of the Judgment he awards *Elegits* into several Counties, (as he may do into every County in England), then he may proceed on them as he sees good, and execute one first, and the other afterwards, or may proceed on them all as he sees Cause; and he need not file the Inquisitions on them, till he have Occasion to use them: And also, though he do file the Inquisitions taken upon some of them; yet he may sue out *Elegits* into all the other Counties, wherein *Elegits* are awarded upon the Record.

It hath been held, That an *Elegit* may be sued out upon a Judgment enter'd above a Year and a Day before, without a *Scire facias*: Because an *Elegit* doth not actually turn the one Party out, and put the other into Possession, but only gives the Plaintiff a Title to bring his Action: And if the Defendant hath any Thing to plead in Discharge of the Judgment, he hath Time enough to do it; because the Plaintiff cannot have Possession, until he recover it by Ejectment. But the contrary hath been lately held, viz. That unless the Plaintiff actually sues out his *Elegit* within a

A bare Rent-seck cannot be delivered upon an *Elegit*.

An *Elegit* executed in London by a Serjeant, and good.

The Sheriff returns upon an *Elegit* that the Party had not Lands but in the Liberty of B where the Bailiff enquired, extended and delivered the Moiety; and held to be well done.

That a Bailiff of a Liberty may make an Inquisition.

And he and not the Jury must deliver the Moiety.

The Defendant may enter after Satisfaction, upon *Elegit*.

What Remedy where disturbed by the Heir.

How to award *Elegits* into several Counties; whereby to make the Land in all those Counties liable.

Whether it may be sued out upon a Judgment above a Years standing, *Sans Sci. fa.*

Year after the Recovery of his Judgment, and continues it down upon the Roll of the Judgment, with a *Vicecomes non misit breve*; he cannot have an *Elegit* after the Year and a Day, without a Judgment upon *Sci. fa.*

After a Term for Years is appraised and delivered in Execution, no Restitution shall be tho' the Debt be satisfied with the Profits.

Tenant by *Elegit*, not punishable for Waste.

The Words *Medietatem terrarum & tenementorum* being omitted, the Court would not amend it.

Where the Writ is good, and the Entry erroneous.

It may be after *Fi. fa.* and *Ca. fa.*

It may be *pro Residuo*.

So also a *Fi. fa. pro Residuo*.

An Advowson not extendible.
Westm. 2. cap. 18.

the Sheriff at the annual Value *ultra Reprisas*; which cannot be in this Case.

The Moiety of the Rent and Reversion extended upon an *Elegit*.

How it is where there are two Judgments and a Moiety is delivered upon one of them.

How the other shall be.

When a Lease for Years is taken in Execution upon an *Elegit* and appraised at 100 *l.* and so delivered in Execution; the Party cannot bring a *Sci. fa.* for Restitution, suggesting that the Plaintiff hath received his whole Money, but after the Appraisement, and before the Delivery, he should have tendred the 100 *l.* and then he might have his *Audita Querela*. Moor, Case 1216.

Tenant by *Elegit*, Statute-Merchant or Staple, are not punishable for Waste. 6 Rep. 37. b.

In the Writ of *Elegit* the Words *& medietatem terrarum & tenementorum præd. tenend.* the said Goods and Moiety of the Lands *quousque*. And after it was executed, it was moved to have it amended being a Misprision of the Clerk, but the Court would not amend it. Cro. Car. 162. pl. 4.

Although the Writ of *Elegit* is right, yet if the Entry be erroneous, the Writ will not help it.

An *Elegit* may be sued after a *Fi. fa.* returned *nulla bona*, and after a *Ca. fa.* returned *non est inventus*. Hob. 57.

So also it may be *pro residuo* after Part levied upon a *Fi. fa.* Hob. 58.

If upon an *Elegit*, nothing but Goods are taken, which are not enough, the Plaintiff may have a *Fi. fa. pro residuo*. Hob. 58.

An Advowson in Gross is not extendible upon an *Elegit*, by the Statute of *Westm. 2. cap. 18.* Because an Advowson cannot be said to be Land, as that Statute says. Also a Moiety must be set out by

the Sheriff at the annual Value *ultra Reprisas*; which cannot be in this Case.

Lands are let for Years rendring Rent, with a Clause of Re-entry; a Judgment is afterwards recovered against the Lessor, and the Moiety of the Reversion and Rent extended; the Condition is suspended during the Extent, as well in the one as the other. 4 Leon. Case 322.

Two Judgments against a Man; *Elegit* is sued out upon the first, and a Moiety extended; then comes the *Elegit* upon the other; and the Judges were of Opinion that the Plaintiff should have but a Moiety of that Moiety which was left. Cro. El. 483. See the Case.

Emblements.

See Tenant for Life.

Emblements are the Profits of the Land which hath been sowed; and in some Cases he which sowed them shall have them, and in some not: As if Tenant for Life sows, and dies, his Executors shall have the Emblements, and not he in Reversion. But if Tenant for Years sows, and before Severance his Lease expires, he in Reversion shall take the Land as he finds it, with the Corn upon it; but he must first enter.

What Emblements are.

And who shall have them.

The Reason why Lessee shall have the Emblements.

The Reason why a Lessee whose Estate is determinable upon an Incertainty shall have the Emblements is, because they arise out of his Labour and Costs. *Cro. El. 463. pl. 11.*

The Reason why Lessee shall have the Emblements.

If a Man sows Land and lets it for Life, and the Lessee dies before the Corn is severed, his Executors shall not have it, but he in Reversion; but if he himself had sowed the Land and died, *aliter*. *Cro. El. 464.*

Land sowed and let for Life, Lessee dies; he in Remainder shall have the Corn, and not the Executor.

If Tenant for Life sows and grants over his Estate, the Grantee dies before Severance, his Executors shall not have the Corn. *Ibid.*

Tenant for Life sows and grants over; the Grantee dies; his Executors shall not have the Corn.

Where Lessee for Years of Tenant for Life hath a Right to the Corn at the Time of the Tenant for Life's Death; it is not Reason that it should be taken from him by the Incertainty of the Death of Tenant for Life. *Ibid.*

Lessee of Tenant for Life sows, he shall have the Corn.

Lessee of Tenant for Life plants Hops; the Tenant for Life dies in *August* before Severance; he in Remainder shall not have them, for they are not to be compared to Apples or Nuts which grow of themselves; but Hops grow by the Manurance and Industry of the Owner. *Cro. Car. 515. pl. 13.*

Lessee of Tenant for Life plants Hops: Lessor dies in *August*, the Remainder-man shall not have the Crop.

Where a Woman, seized of Land during her Widowhood, sows the Land, and before Severance marries; he in Reversion shall have the Corn, it being her own Fault to determine her own Estate by her own Act.

Where seized *durante viduitate*, sows, and marries.

Where a Man leaseth Land at Will, and the Lessee sows the Land, and then the Lessor determines his Will; yet the Lessee shall have the Corn: But if the Lessee himself determines the

Where Tenant at Will sows, and the Will is determined.

Will

Will before Severance, there he shall not have it. See 5 Rep. 116. and *Terms of the Law*. 168. a. b.

Where the Wife, and not the Husband's Executors, shall have it.

If a Feme sows Land and marries, and her Husband dies before Severance; here the Feme shall have the Corn, and not the Executors of the Husband: Because the Husband did not sow it.

A Copyholder sows, and surrenders, how to be.

Baton, seized of a Copyhold in Fee, sows it, and then surrenders to the Use of his Wife, who is admitted; afterwards the Husband dies before Severance: Here the Wife shall have the Corn, because the Husband passed it with the Land to the Wife, as annexed to the Land; and by this, the Privilege which the Law gave him that sowed it, is taken away by the Surrender. *Roll's Abr.* 727.

Where the Corn shall go with the Land, and where not.

A Man devises his Land to his eldest Son and his Heirs, and takes no Notice of the Corn upon it: Who shall have the Corn upon it? By *Saunders Chief Justice*: Where a Man seized of Land sows it and dies, the Corn goes to the Executor, and not to the Heir: But where a Man devises his Lands sown, and says Nothing of the Corn, the Corn shall go with the Land to the Devisee.

Where void as to the Land, and good as to the Corn.

But where the Devise of the Land is to the Son and Heir, which is void, and he is in by Discent; then whether the Devise is void for the Land, and good for the Corn, or void for both? There he was of Opinion, That it should be good for the Corn, though void for the Land.

Where the Devisee, and not the Devisor's Executors, shall have them.

A Man seized in Fee of Land sows it, and devised the Land to J. S. and died before Severance: And held by all the Judges, that the Devisee, and not the Devisor's Executors, shall have the Corn. *Winch* 51.

Where the Remainder-Man, and not the Executor, shall have them.

Tenant in Fee sows the Land, and devises it to A. for Life; Remainder to B. for Life, and dies; A. dies before Severance; he in Remainder shall have them with the Land, and not the Executor of the first Tenant for Life. *Cro. El.* 61. pl. 3. See 464. *Hob.* 132.

Where the Devisee of the Land, and not the Devisor's Executors, shall have them.

A Man devises Land, and after sows it, and dies before Severance; the Devisee, and not the Devisor's Executor, shall have the Corn. *Winch* 52.

The Executor, and not the Heir, shall have the Corn.

The Executor shall have the Corn sown by the Ancestor, and not the Heir. *Hob.* 132.

The Law gives a Liberty to carry off the Corn.

The Law gives to the Party whose Right it is, free Ingress, Egress and Regress, to enter, cut down and carry away the Corn. *Co. Litt.* 56. a.

Tenant at Sufferance cannot cut Corn.

Tenant at Sufferance sows the Land, and afterwards a Judgment is recovered against him, and the Corn seized thereupon, and sold by the Sheriff; then the Landlord enters, and afterwards the Sheriff cuts the Corn and carries it away: Trespass lies for the Landlord against the Sheriff and his Officers. *Sir John Bank's Case*, in 36 Car. 2.

Embracery.

See { Champerty.
Maintenance.

An Embracer is he that when a Matter is in Trial between Party and Party, cometh to the Court with one of the Parties, (having received some Reward so to do) and speaketh in the Case, or privately labourerth with the Jury, or standeth in Court to surbey, brow-beat, or overlook them, whereby to put them in Fear or Doubt of the Matter; but Lawyers and Attornies may speak in the Case for their Clients.

What it is.

See for the Punishment of Embracery by the Statute of 32 H. 8. cap. 9. in Title Maintenance.

The Punishment of it.
32 H. 8. cap. 9.

The Plaintiff himself may labour the Jurors to appear; but a Stranger must not. And the writing of a Letter, or Parol Request by one who is not Party to the Suit, to a Juror to appear, is Maintenance: Also if the Party instructs a Juror by Writing or Parol, or promises any Reward for Appearance, this is Embracery as well in the Party as a Stranger.

Who may labour a Juror to appear, and who not.

What is Maintenance.

What is Embracery.

Emparlance, See Imparlance.
Endowment, See Indowment.
Enrollment, See Introllment.

Entry.

See { Assignee.
Condition.
Possession.

Entry is where a Man enters personally: or another, by his Command, enters into any Lands or Tenements, to which he hath a Title of Entry.

Entry, what it is.

If Entry be without Consent, tho' the Doors were open, it is Forcible, if he keeps Possession.

the Will of the Possessor of the House.

Possession is a good Plea to bar Restitution.

He entred as Servant is a good Plea.

Three Years Possession is a good plea to bar Restitution.

Words alone cannot make an actual Entry.

so. *Mich.* 1650. B. S. For the Word *Ouster* doth imply a violent Act to be done, viz. a violent putting out, and not Words spoken only.

Lessee for Years cannot bring Trespass till actual Entry.

a Bargain and Sale for Years in Consideration of Money puts a Man in Possession presently, upon the Execution thereof; so that he may bring Trespass before Entry.

Tenant for Years holding over his Term, is Tenant at Sufferance until the Lessor enters.

him, nor Trespass until Entry; yet if he sows the Land and the Lessor enters before it be ripe, the Landlord, and not the Tenant, shall reap it; but if Tenant for Life had sowed the Land and died before Harvest, here his Executors shall reap, because he had a good Title when he sowed; but Tenant at Sufferance had not, but only a bare Possession: So Note a Diversity between sowing of Corn with a Title

But if Tenant at Sufferance pay Rent, it amounts to a Lease at Will.

Entry into Part of a Freehold is an Entry into all, if there be but one Tenant; but if there be several, there must be several Entries.

if there be several Tenants possessed of the Freehold in question, there must be several Entries made upon the several Tenants in Respect of their several Interests; but if he who hath no Right to enter doth enter, he shall gain Title to no more by his Entry than that

If one enter into the House of another without his Consent, although the Door of the House was open when he entered into the House, yet this is a Forcible Entry if he detains the Possession from him. *Mich.* 22 Car. B. R. Because it is against

Possession without Title is a good Plea in a Forcible Entry to bar Restitution, although on Demurrer. 84, 85.

On an Indictment of Forcible Entry, to say he entred as Servant, without saying by whose Command, is good enough. *Ibid.*

In Bar to Restitution on a Forcible Entry, the Defendant ought to plead that he was in Possession three Years before the Inquisition found. *Id.* 85.

Words alone cannot make an actual Entry and Ouster, altho' they be violent and threatening; but there must be Force used by the Party to make it

so. *Mich.* 1650. B. S. For the Word *Ouster* doth imply a violent Act to be done, viz. a violent putting out, and not Words spoken only.

Lessee for Years by the Words *Demise*, *Grant* and to Farm let, is not in Possession to bring Trespass until an actual Entry; neither will a Release work upon it without an actual Entry: But

a Bargain and Sale for Years in Consideration of Money puts a Man in Possession presently, upon the Execution thereof; so that he may bring Trespass before Entry.

Where Tenant for Years holds over his Term, here he is Tenant at Sufferance until actual Entry is made by the Lessor: but let him take Care of himself; for altho' neither Debt for Rent will lie against

him, nor Trespass until Entry; yet if he sows the Land and the Lessor enters before it be ripe, the Landlord, and not the Tenant, shall reap it; but if Tenant for Life had sowed the Land and died before Harvest, here his Executors shall reap, because he had a good Title when he sowed; but Tenant at Sufferance had not, but only a bare Possession: So Note a Diversity between sowing of Corn with a Title to the Land at the Time of sowing, and without; but if Tenant at Sufferance will pay the Landlord a Quarter or half a Year's Rent, for Rent due in his own Time; this will amount unto a Lease at Will.

If he who hath Right of Entry into a Freehold in question, do enter into part of it; this Entry shall be accounted an Entry in all that Part of it, which is in the Possession of one Tenant, tho' he entred not into all that he possessed; but

if there be several Tenants possessed of the Freehold in question, there must be several Entries made upon the several Tenants in Respect of their several Interests; but if he who hath no Right to enter doth enter, he shall gain Title to no more by his Entry than that

Part only, whereupon he did make his actual Entry. 8 Nov. 1650. B. S. So Note a Difference where he that entred, hath a Claim of Entry, and where not, in respect of the Favour the Law affords.

Where a Man will avoid the Operation of a Fine, he must make an actual Entry before good Witnesses; and it will be convenient for him to take a *Memorandum* in Writing of the Day and Place, and Manner of the Entry, and that the Witnesses do subscribe their Names as Witnesses thereunto.

How an Entry must be made to avoid a Fine.

The Delivery of a Declaration in Ejectment, will not amount to an Entry to avoid a Fine. 1 Saund. 319.

Delivery of Declaration in Ejectment is not a sufficient Entry to avoid a Fine.

A special Entry into a House with which Lands are occupied, by claiming the whole, is a good Entry as to the whole House and Lands to reduce the Title to him that makes this special Entry from him that was in Possession of it, and upon whom he entred. Trin. 1651. B. S. But a general Entry will not serve the Turn: A general Entry is an Entry made without any particular Claim made unto any other Things than unto that House, or Piece of Land upon which he entered.

What shall be a sufficient Entry to reduce the Title from him that was in Possession.

What a general Entry is.

If one doth live in the House of his Father, and doth continue in the House after the Death of his Father who died in Possession, his continuing there shall not be said an Entry to avoid an Estate in the House. Pasch. 1652. B. S. For it shall not be intended that he keeps in Possession upon any other Colour, than as one of his Father's Family left in the House at his Father's Death, except the contrary do appear.

The Son living in the House after his Father's Death, is not an Entry to avoid an Estate.

If one will disclaim a Suit, he that doth disclaim, must enter his Disclaimer upon Record. 1652. B. S. or else the Court cannot take Notice thereof; for of private Actions between the Plaintiff and the Defendant, the Court *ex Officio* are not bound to take Notice; and such are all such Things as do not appear upon Record.

Disclaimer of a Suit must be entred on Record.

A Remainder of an Estate of Freehold or Inheritance, cannot cease without Entry or Claim, no more than an Estate of Freehold in Possession. Cro. El. 360. pl. 20. 361.

A Freehold in Possession or Remainder can not cease without Entry.

The Manner of the Entry is this: If it be a House, and the Door is open, then you must go into it, and say these Words, *viz. I do here enter and take Possession of this House*: But if the Door be shut, then set your Foot upon the Groundsell, or against the Door of the House, and say the same Words as before. If the Entry be to be made upon Land, then go upon the Land, and say, *I here enter, and take Possession of this Land*. You must be sure to have good Witnesses of your Entry; and it will necessary for them to take a *Memorandum* of it in Writing. If another is to enter for you, then he must say, that *I do here enter, and take Possession of this House, to the Use of A. B.*

The Manner of entering into Houses and Lands.

Where

How to make a Lease,
 &c. when the Lessor is
 out of Possession.

Where a Man hath a Title to Land and is out of Possession, he cannot make a Lease of the Land any otherwise than by Entering and Sealing and Delivering of the Lease upon the Land; or else making of a Letter of Attorney under his Hand and Seal for some other Person to do it. See *Dalison* 81. pl. 20.

How Entry must be
 when there are several
 Parcels in several Sei-
 fins,

If a Man hath a Right to enter into three Acres in the Seisin of three several Persons, and all in one County; if he enters into one in the Name of all, this is not sufficient to bring an Assise of the Residue; but the Entry ought to be made upon every particular Parcel. *Dalison* 88. pl. 2.

Grounds of Law, as
 to Entries, and how
 they shall operate.

If Entry may be made into Land, or any Thing, it shall not be in the Party before Entry. 1 *Plow.* 133. a.

If Entry cannot be, but only Claim, then it shall be in him, before Claim. *Ibid.*

That if neither Entry nor Claim can be made, then it shall be in him by Act of Law, without the Act of the Party. *Ibid.*

In what Cases there
 must be an actual Entry.

And where Lease and
 Entry and Ouster will
 do.

In all Cases, where a Person hath a Right to an Estate upon Condition broken, the Party cannot bring his Ejectment for the Recovery of his Right, until an actual Entry: But where a Man is intituled to enter by Discent, or for Non-payment of Money due upon a Mortgage, there needs no actual Entry; but the Entry and Ouster confessed in the Rule of Ejectment is sufficient. But by *Wyndham* Justice: This is only of an Entry sufficient to make the Lease that entitles to the Action, not of an Entry that gives a Title to the Land. 3 *Keb.* 282. pl. 2. And of that Opinion was the Lord Chief Justice *Saunders*.

But Note, Of late Years the Judges have agreed, as I have heard, That the Confession of Lease, Entry and Ouster, will do now in all Cases, except for the avoiding of a Fine, where an actual Entry is necessary; but I think it adviseable however to make an actual Entry. 1 *Vent.* 248.

Where Entry into one
 Parcel of the Land let
 is good for all other Par-
 cels let to other Tenants.

Also Entry upon the
 Land, is Entry into the
 House upon it.

What is not a Forcible
 Entry.

If a Disseisor makes several Leases for Years, and the Disseisee enters into one Part in the Name of the whole, this is good for all; for they are all derived out of one Freehold: Also an Entry upon Part of the Land is an Entry into the House. *Cro. El.* 188. pl. 16.

If a Person who hath Title of Entry finds an House open, and enters thereinto, and keeps the Possession; this is no Forcible Entry: For he found the House without a Possessor, and therefore may (having a Title) lawfully enter thereinto.

Lessee for Years en-
 ters before his Lease
 commences: It is a Dis-
 seisin.

Lessee for Years enters before his Lease commences: This is a Disseisin, and not a Possession by Vertue of the Lease. 1 *Lev.* 44. to 46.

Entry.

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Lessee of a future Interest enters by Colour of his Term before it commences: After Commencement the Lessor ousts him: He may assign over his Term without Entry. 1 *Lev.* 47.

A Right of Entry preserves a Contingent Remainder. 2 *Lev.* 35.

Conuzee of a Statute cannot assign the Land after a *Liberate*, until he hath actual Possession. 2 *Lev.* 312.

A Right is not assignable, before it be regained by Ejectment or Re-entry. 3 *Lev.* 312. *Dalison* 81. *pl.* 20.

By the Stat. 4 & 5. *Annæ*, it is enacted, That no Entry or Claim to be made of or upon any Lands, Tenements or Hereditaments, shall be of any Force or Effect to avoid any Fine levied with Proclamations in the Court of Common Pleas, or in the Sessions in any County-Palatine, or Grand Sessions in *Wales*, of any Lands, Tenements or Hereditaments; or shall be a sufficient Entry or Claim within the Statute of Limitations made 21 *Jac.* 1. unless upon such Entry or Claim, an Action shall be commenced within one Year after the making of such Entry or Claim, and prosecuted with Effect.

A Friend of him who had Right entred for his Use, but without his Direction, to avoid a Fine: This Entry will not do; because the Stat. of 4 *H.* 7. *cap.* 24. says, That the Entry or Claim must be made by him who hath Right, which the Stranger had not. *Cro. El.* 567. *pl.* 19. *Moore, Case* 630 and 613.

The Claim to be of an Equity to avoid a Fine must be by *Subpæna* in Chancery. *Chanc. Rep.* 278.

The Grantee of a Reversion may take the Benefit of the Statute of 32 *H.* 8. *cap.* 34. and enter for a Condition broken. *Hill & Grange.* 1 *Plow.* 176, to 179.

Where I may enter into the House of a Stranger to take my Goods, and where not. *Lutw.* 1311, 1312.

How to justify the Entry of the House of a Stranger, to take the Goods of *J. S.* in Execution. *Lutw.* 1434, 1436. And how to take a Man upon an *Homine Replegiando*, 1432, 1433.

A Bailiff cannot enter for a Condition broken without his Master's Command. *Dalison* 55. See Title Bailiff.

Lessee of a future Interest enters before Commencement.

He may assign over his Term without Entry.

What preserves a Contingent Remainder.

Conuzee of a Statute cannot assign after a *Liberate*, until actual Possession.

A Right not assignable till regained by Re-entry.

4 & 5 *Annæ*.

How and what Entry and Claim will do upon a Fine; and an Action to be commenc'd in a Year after the Entry, and prosecuted.

21 *Jac.* 1. Of Limitations.

The Entry of a Stranger to avoid a Fine is void.

4 *D.* 7. *cap.* 24.

Cro. El.

How a Claim to be made in Chancery to avoid a Fine.

Grantee of a Reversion may enter for a Condition broken.

32 *D.* 8. *cap.* 34.

Where to enter into the House of a Stranger to take my Goods.

How to take Goods in Execution.

Bailiff cannot enter for a Condition broken.

Equity of Redemption, See { Chancery.
Mortgage.

Error.

Certiorari.

Contempt.

See Abatement.

Guardian.

Judges.

A Writ of Error, what it is.

Error is the Name of a Writ which issues out of Chancery, and lies where Judgment is given in any Court of Record; and is returnable only in the King's Bench. And if upon the Transcript of the Record into the King's Bench, it appears to the Court that there is Error in the Record or Process, or giving of the Judgment, then the Judgment is reversed; but if there be none, then it is affirmed with double Costs.

Plaintiff's Attorney need not search the Record; but may take out Execution for his Client.

The Plaintiff's Attorney is not bound to search the Record, whether a Writ of Error be brought or not; but may take out Execution upon the Judgment given for his Client, if there be no *Superfedeas* taken forth, or if he have not Notice given him of the Writ of Error. *Trin. 24. Car. B. R.* For a Writ of Error is an extraordinary Thing, and seldom brought; and therefore the Attorney is not to take Notice of it without Notice given him.

Want of a Bill in B. R. is Error, and why.

The want of a Bill in the King's Bench is Error upon a Judgment by Confession or Default (not after a Verdict) although the Plea-Roll contains a Declaration; because the Bill is the Original Process there: And if there be a Bill, and the Defendant plead not till a Year after, yet all the Continuances are not entred upon the Bill; and when the Defendant pleads, then the Declaration is entred upon the Plea-Roll thus: *Et modo ad hunc diem, scilicet diem, &c. isto eodem Termino, usque quem diem predictus Defendens habuit licentiam ad Billam præd. interloquendi, & tunc ad respondend' &c.*

Writ of Error discontinued for want of Prosecution, yet Execution cannot be had upon the Judgment till the Discontinuance be certified.

If a Writ of Error be brought to reverse a Judgment, and afterwards this Writ of Error is discontinued for want of Prosecution of the Party; yet Execution cannot be had upon the Judgment, until this Discontinuance of the Writ of Error be certified from the Court where the Writ of Error is discontinued, unto the Court where the Judgment was given. *21 Car. B. R.* For before such Certificate, the Court where the Judgment was given cannot take Notice of the Discontinuance of the Writ of Error; and before it be either discontinued or Judgment affirmed here, Execution cannot be taken out.

A Writ of Error out of the Chancery lies upon all Judgments given in this Court where the Suit is commenced by Bill, (except only where the King is a Party) returnable in the Exchequer-Chamber, before the Judges of the Common Pleas and Barons of the Exchequer of the Degree of the *Coif*, by the Statute 27 *El.* 8. 31 *El.* 1. But where the Suit is by Original Writ, or where it is brought by Bill *qui tam*, &c. or after a Judgment is affirmed in the Exchequer-Chamber, in all these Cases a Writ of Error lies in Parliament, and not elsewhere.

Although special Errors are assigned, yet if they are all Errors in Law, you must always conclude with the General Errors; but where Errors in Fact are assigned, you must insist upon them only, and cannot take any Advantage, or have any Issue joined upon Errors in Law.

A Writ of Error doth lie for one that is committed by a Justice of the Peace for a Forcible Entry committed by him. *Trin.* 22 *Car.* B. R. For the Commitment is grounded upon a Judgment given by the Justice against the Party committed, and he may bring a Writ of Error to reverse this Judgment, that he may regain his Liberty.

All Parties that are grieved by an erroneous Judgment may join in a Writ of Error to reverse the Judgment; for this stands with Justice; but Persons that are not damnified by it, cannot join with others that are damnified by it, to reverse it. *Mich.* 22 *Car.* B. R. For the Law will not favour any to sue who have no Cause, nor are concerned.

If an erroneous judicial Process issue out of this Court, it is in the Power of the Court to quash it, or else to put the Party grieved to bring his Writ of Error, which they shall think most fit.

Where Judgment is recovered against the Bail, upon a *Scire facias*, they may bring their Writ of Error *tam in redditione Judicii quam in adjudicatione Executionis*; but they must pay double Fees.

Errors to a Judgment ought to be assigned upon the Record. 22 *Car.* B. R. That they may appear to the Court who are to judge of them.

No Person shall be compelled to bring a Record into the Court, to make an Error in another Record. *Mich.* 23 *Car.* B. R. For the Law doth favour Matters of Record, and will affirm them rather than question them, without apparent and legal Cause shewn to the contrary.

If a Judgment given in an Inferior Court be entered in this Manner, *Ideo consideratum est*, and the Words *per curiam* are omitted, (as they ought not to be) the Judgment is erroneous; but if a Judgment given in a superior Court, *viz.* in any of the Courts at *Westminster* be entered, and the Words

Writ of Error lies upon Judgment given in B. R. if the Suit be commenced by Bill, returnable in the Exchequer-Chamber. But if the Suit be by Original, &c. it lies only in Parliament.

If special Errors in Law are assigned, the Conclusion must be with the general Errors; otherwise where Matters of Fact.

It lies for one committed for a Forcible Entry.

Persons grieved by an erroneous Judgment, may join in a Writ of Error.

Judicial Process, if erroneous, may be quashed, or Writ of Error lies.

Where the Bail may bring it.

Errors to a Judgment must be assigned on the Record.

A Record need not be brought into Court to make Error in another Record.

If in the Entry of a Judgment in inferior Courts the Words *Per curiam* be omitted, it is Error; *aliter*, in any of the Courts of *Westminster*.

per

per Curiam are omitted, the Judgment is well enough, that being the Practice of the Superior Courts. *Mich. 22 Car. B. R.* For inferior Courts are tied to observe their ancient Forms of Proceedings, and not to vary from them; but the Superior Courts have more Liberty.

The Court upon Motion will reverse an erroneous Judgment after Issue joined and Record entered.

He that hath obtained a Judgment, if he find that it is erroneous, may after Issue is joined, and the Record entered, move the Court to have it reversed for his own Dispatch, which the Court will do when they are satisfied what the Error is. *Mich. 22 Car. B. R.* For till such a Judgment is reversed, the Plaintiff cannot bring a new Action for the same Cause for which that Judgment was given; for if he should, the Defendant may plead the Judgment in Bar of the second Action.

If Defendant after Judgment bring a Writ of Error, but neglects to certify the Record into Court, a *Nolle prosequi* will be granted.

If the Defendant after Judgment given against him, do bring a Writ of Error to reverse the Judgment, but doth not by the time appointed in the Rule for that Purpose, (with which the Attorney for the Plaintiff in the Errors must be served) certify the Record into this Court, the Court will grant a *Nolle prosequi* upon such Writ of Error, so that the Defendant in Error may have Execution upon the Judgment. *Mich. 22 Car. B. R.* For the Law doth not favour unnecessary Delays in the Proceedings thereof.

Where it must be brought to reverse a Judgment given in the Cinque-Ports.

If a Judgment be given in any of the Cinque-Ports, if the Defendant will bring a Writ of Error to reverse it, he must bring his Writ of Error before the Warden and Constable of *Dover*, and not in this Court. *Mich. 22 Car. B. R.* This is one of the Privileges that belong unto those that inhabit within any of the Cinque-Ports, or Members thereof, not to be sued out of their own Precincts.

Where to reverse a Judgment in the Sheriffs Courts of *London*.

If an erroneous Judgment be given in any of the Sheriffs Courts of the City of *London*, the Writ of Error to reverse this Judgment, must be brought in the Court of *Hustings* before the Lord Mayor. *Hill. 22 Car. B. R.* For that is the superior Court in respect of the Sheriffs Court.

How a Writ of Error in Parliament is made returnable.

A Writ of Error that is brought in the Parliament, is made returnable immediately; or, upon a Prorogation, *ad proximum Parliamentum*. *Pasch. 23 Car. B. R.* Because that Court, during the Session of it, sits continually, and hath no Vacation; and it is for the Honour of that High Court to be immediately attended, that they may do the speedier Justice: The Proceedings there are very expeditious, there being no *Scire facias*; but upon a Motion made in the House by one of the Peers, a Day is appointed for the Plaintiff in the Errors to assign his Errors, and after Issue is joined upon *In nullo est erratum*, upon another Motion made in manner aforesaid, their Lordships appoint a Day for the hearing of the Errors, at which Day both Parties must attend with their Counsel, but neither Party must have more than two Counsel to plead for him.

When

When a Writ of Error is brought to reverse a Judgment, the Party that brings the Writ must cause the Roll where the Judgment is entred to be mark'd with the Word *Error* in the Margin by the Clerk of the Errors, whereby the other Party may take Notice upon the Record, that the Writ of Error is brought; and this marking of a Roll is a *Superfedeas* in it self, (if the Attorney for the Plaintiff in the Action hath notice thereof) to hinder Execution to be taken out upon the Judgment, if Bail be put in where Bail is required; but after the Writ is allowed where no Bail is required, and where Bail is required, if allowed, and Bail put in; in these Cases the Clerk of the Errors will make a *Superfedeas*, which must be forthwith allowed with the Sheriff of the County or City where the Action is laid; but if Execution should be executed contrary to Law, or to the Practice of the Court, then the Court will grant a *Superfedeas, quia erronee emanavit*, to make void the Execution. *Mich. 23 Car. B. R.*

Clerk of the Errors must mark the Roll where an erroneous Judgment is enter'd, with the Word *Error* in the Margin, which is a *Superfedeas*, if the Plaintiff's Attorney have Notice of it. And in what Cases he will make a *Superfedeas* to the Sheriff of the County, &c.

Upon a Writ of Error brought upon a Judgment in the Court of Common Pleas, and a *Certiorari* is sent to the *Custos Brevium* to certify the original Writ, upon which the Action was commenced there, (for that Writ remains filed with the *Custos Brevium* of that Court, to warrant the bringing of the Action,) the *Custos Brevium* must certify the original Writ, together with the Return thereof. *Mich. 23 Car. B. R.*

Upon a Writ of Error brought in C. B. the *Custos Brevium* to certify the original Writ.

A Writ of Error is not to be brought in Parliament to reverse a Judgment given in the Common Pleas, but the Writ of Error ought to be brought returnable in the Court of King's Bench; but where a Writ of Error is brought in the King's Bench upon a Judgment in the Court of Common Bench, and afterwards the Judgment in the Court of Common Bench is reversed or affirmed in this Court, the Party grieved may, if he thinks fit, have his Writ of Error upon that Record returnable in Parliament. *Hill. 23 Car. B. R.* the King's Bench being the supreme Court under the Parliament.

It lies not in Parliament to reverse a Judgment given in C. B. but must be brought in B. R. And if it be either affirmed or reversed there, either Party may then bring a Writ of Error in Parliament.

The Chief Justice only, if there be any, and if not, the eldest Judge, and not any other of the Judges of the Court, ought to allow a Writ of Error that is brought. *Hill. 23 Car. B. R.* Because it is to overthrow a Judgment, which is a Matter of a high Nature; and the King directs his Writs to the chief Ministers of Justice in that Place whither the Writs are directed.

The Chief Justice or eldest Judge only to allow a Writ of Error.

If a Judgment given in this Court be erroneous in matter of Fact only, and not in matter of Law, a Writ of Error, *quod coram nobis residet*, may be brought in this Court where the Judgment was given to reverse it; and it is not necessary to bring a Writ of Error in Parliament; but if the Judg-

If a Judgment be erroneous in Matter of Fact only, the Court where it was given may reverse it: But not if it be erroneous in Matter of Law.

ment be erroneous in matter of Law, then a Writ of Error cannot be brought into this Court to reverse it. *Pasch. 23 Car. B. R. 1650. B. S.* For Error in Fact is not the Error of the Judges, and therefore the reversing of a Judgment given by them, which is only erroneous in matter of Fact, is not the reversing their own Judgment: But it is otherwise if the Judgment were erroneous in matter of Law; for they cannot be thought to reverse their own Judgments; also every Act of a Court which is final and erroneous, is to be reversed by a higher Authority, and not the same.

A *Certiorari* on Diminution alledged may be directed to an inferior Court.

A Writ of *Certiorari* upon Diminution alledged upon a Writ of Error brought, may be directed to an inferior Court. *Trin. 24 Car. B. R.* Because the whole Proceedings were not at the first certified, and if it should not be supplied by a Writ of *Certiorari* and the Return thereof, the Judgment must be reversed.

If the Plaintiff discontinue before the Defendant has pleaded, he may have a new Writ, but not after.

If he that doth bring a Writ of Error, do discontinue his Writ, before the Defendant in the Writ of Error do plead unto it, he may have a new Writ of Error; but if he discontinue his Writ after the Defendant hath pleaded *in nullo est erratum* to it, he cannot have a new Writ. *Mich. 1649. B. S.* For then the Defendant hath joined Issue upon the Writ brought; but before he hath pleaded he may, for the bringing of the new Writ is but the Abatement of his own former Writ, and no ways prejudicial to the Defendant.

Any Person that may be damnified by an erroneous Record, may bring Error to reverse it.

If by any Possibility there may be supposed to be Error in the Record, any Person that may be damnified by this Error, may bring a Writ of Error to reverse it. *Hill. 1649. B. S.* For although he be not named a Party to the Record, yet the Law hath made him a Party to it, by subjecting him to Damage by it; and it is therefore reason he should be permitted to use all lawful Means to defend himself from it.

A Judgment may be erroneous, though not given for the Plaintiff; and the Defendant is thereby acquitted.

it ought to be *in Misericord. pro falso clamore. Hill. 1649. B. S. & e contra.*

All that are Privies to the Record may bring Error to reverse it.

Error cannot be brought to reverse a Judgment by Default, before a Writ of Inquiry executed.

A Judgment may be an erroneous Judgment, although it be not given for the Plaintiff, but the Defendant is thereby acquitted; for it may be erroneous in the Entry of it; for it may be it is entered with a *Capiatur* against the Plaintiff, whereas

All the Parties Privies to the Record may join in a Writ of Error to reverse it, if it be erroneous. *Hill. 1649. B. S.* For they are concerned in it, and may be prejudiced by it.

A Writ of Error cannot be brought to reverse a Judgment by Default before a Writ of Enquiry of Damages, which issues out upon the Judgment, be executed. *Hill. 1649. 2 Feb. B. S.* For the Default is but an interlocutory Judgment; but the

Verdict of the Jury and Judgment of the Court thereupon, is the final Judgment, upon which only the Writ of Error must be brought: So likewise

likewise in an Account Render it lies not upon a Judgment *quod computet*, nor in Partition upon the Judgment of *quod partitio fiat*, but only upon the Judgment *quod partitio stabilis fit*.

The Party who is to have Benefit by the Reversal of a Judgment, may bring a Writ of Error to reverse it, as well as the Defendant: As in the Case of a Fine or Recovery, the Heir in Tail may have it; so may an Executor upon a Judgment against his Testator; or the Heir upon a Judgment against his Ancestor. *Hill. 1649. B. S. 4 Feb.*

He who is to have Benefit by the Reversal of a Judgment, may bring Error to reverse it.

If a Writ of *Hab. fac. possessionem*, to deliver Possession to the Plaintiff, of Lands recovered by him in an *Ejectione firma* doth contain in it more Acres of Land than were contained in his Declaration, the Writ is erroneous; for there is no Warrant for such a Writ: But if the Sheriff do deliver Possession of more Acres of Land than are contained in the Writ, this doth not make the Writ erroneous, for that is the Error of the Sheriff, and not of the Writ; but there an Action of Trespass, or Action upon the Case doth lie against the Sheriff for doing it, or an Affize, or Ejectment may be brought against him that hath the Possession delivered to him, for the Surplusage of the Land delivered unto him, *18 Nov. 1650. B. S.* For so much he is a Disseisor, because he never recovered it, and so ought not to have Possession delivered him thereof.

If a Writ of *Hab. fac. possessionem* contain more Acres than in the Declaration, it is erroneous; but if the Sheriff deliver more Acres, it makes not the Writ erroneous, but an Action lies against him.

A Writ of Error ought to mention before whom the Judgment was given, for which it is brought, *31 Jan. 1650. B. S.* That it may be the more certain.

Must mention before whom the Judgment was given.

A Judgment cannot be reversed in Part, and stand good for other Part, or reversed as to one Defendant, and good against the rest; as for Instance, three Persons are sued, whereof one of them is an Infant, they all appear and plead by Attorney; this Judgment shall not be reversed as to the Infant only, but the whole Judgment, as it is in it self intire, must be intirely reversed.

A Judgment cannot be reversed in Part, and stand good for the rest.

If it appear in the Record that Judgment be given upon a Matter which doth arise out of the Jurisdiction of that Court where the Judgment is given; this is an erroneous Judgment. *3 Feb. 1650. B. S.* For such a Judgment is given *coram non Judice*, and so is void *in toto*, and as if no Judgment were given; but if no such Matter appears in the Record, the Plaintiff in the Error cannot assign for Error that the Fact was committed out of the Jurisdiction of that Court.

If it appear that Judgment was given on a Matter out of the Jurisdiction of the Court, it is erroneous.

If a Judgment be entred *quod recuperare debeat*, or *recuperaret*, for *recuperet*, in both these Cases it is erroneous. *10 Maij, 1651. B. S.* For by the Entry here it is not a present Judgment, but a Judgment in Expectancy.

Quod recuperare debeat, and *recuperaret*, are both erroneous.

A Writ

Error lies for the Husband to reverse an Outlawry against his Wife.

he is bound to defend and vindicate his Wife in all lawful Things.

Writ of Error quash'd because the Errors, tho' material, were assigned in the Vacation.

Court cannot take notice of them, nor proceed to the Trial of them upon such an Assignment.

Misentry of a Clerk amended first in C. B. and then in B. R.

Error to reverse a Judgment cannot be assigned in the Execution.

To demand less than due is not Error in an Action on the Case, but in Debt it is.

Writs of Error upon Judgments in the King's Bench to be determined in the Exchequer-Chamber.

27 Eliz. c. 8.

count, Action on the Case or Trespas, where the King is not a Party, a Writ of Error shall be directed to the Chief Justice to cause the Record to be brought before the Justices of the Common Bench and Barons of the Exchequer, of the degree of the Coif, or six of them at the least, who shall examine such Errors, and reverse or affirm such Judgment, other than for Errors concerning the Jurisdiction of the said Court, or for want of Form in any Writ, Return, Plaint, Bill, Declaration, or other Pleading, Process, Verdict or Proceeding, and the same shall be brought back into the King's Bench, that such further Proceeding thereupon may be had, as well for Execution or otherwise, as to Justice shall appertain.

A Writ of Error lies from thence in Parliament. Sect. 3.

Lies not where the King is a Party.

Error lies not in the Exchequer-Chamber upon a Judgment upon a Sci. Fa.

27 Eliz. cap. 8.

A Writ of Error doth lie for the Husband to reverse an Outlawry against his Wife, 10 Maij 1650. B. S. For his own Interest is concerned in it, and

Errors were assigned in a Record in the Vacation, upon a Writ of Error to reverse a Judgment, and although the Errors were material, yet because they were not assigned in the Term, the Writ of Error was quash'd. Hill. 1655. B. S. For the

The Misentry of a Clerk in the Common Pleas was first amended there, and afterwards in the King's Bench, after a Writ of Error brought. Roll. 1 Rep. 309.

Upon a Writ of Error to reverse a Judgment, Error cannot be assigned in the Execution. Roll. 1 Rep. 365.

If a Man in an Action upon the Case will demand less than is due, it is not Error. Roll. 2 Rep. 127. Also in Case or Covenant, if the Plaintiff miscasts the Sum, it is not Error, but in Debt it is. Roll. Rep. 335.

Whereas erroneous Judgments given in the King's Bench were only reformed by the Parliament, now by the Statute of 27 Eliz. cap. 8. it is enacted, That upon any Judgment given in the King's Bench in any Ejectment, Debt, Detinue, Covenant, Ac-

That the Party who finds himself aggrieved herein may sue out his Writ of Error in Parliament, as before was used. Sect. 3.

In an Action *qui tam* upon a Statute where the King is to have a Part, no Writ of Error lies. 1 Keb. 835. pl. 16.

Error lies not in the Exchequer-Chamber upon a Judgment upon a Sci. Fa. in the King's Bench, it being *casus omissus* out of 27 El. cap. 8. Cro. Jac. 171. pl. 12. Neither doth it lie upon a Judgment upon a Sci. Fa. upon a Judgment affirmed in the Exchequer-Chamber. 5 Mod. 230.

Error.

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In Case of real Actions Error and Attaint always descends to such Persons to whom the Land should descend. 1 Leon. Case 356.

A Writ of Error may be brought in the Bishop's and Defendant's Name in a *Quare Impedit*. Cro. El. 65. pl. 11.

He in Reversion or Remainder upon an Estate-Tail may have a Writ of Error at the Common Law upon a Recovery had against Tenant in Tail in Reversion. 1 Leon. 272.

In what Cases Execution shall not be stayed upon the bringing of Writs of Error, until a Recognizance entred into; and in what Cases they may have a *Superfedeas* without it. See the Statute of 3 Jac. 1. cap. 8. and 13 Car. 2. cap. 2. Sess. 2. sess. 8. and 16 & 17 Car. 2. cap. 8.

The assigning of general Errors upon a Writ of Error to reverse a Judgment, is to say generally, That the Declaration is not sufficient in Law; and also that Judgment was given for the Plaintiff, where it ought to have been given for the Defendant.

Error in Process cannot be alledged after *In nullo est erratum* pleaded; for if it had been pleaded, the other Party might have alledged Diminution. Cro. El. 83.

A Writ of Error was brought in B. R. upon a Judgment given in a Writ of false Judgment, and the Judgment was reversed, and Restitution awarded. Cro. Jac. 138. pl. 15.

Ejectment against two who pleaded by Attorney, one being an Infant; and it was insisted, that this was not Error, but *quoad* him within Age. But in regard the Damages and Costs are intire, the Judgment was reversed for both. Cro. Jac. 303. pl. 3. 290.

An Error assigned directly against the Record is not receivable. Cro. Jac. 359. pl. 19.

The Principal and Bail cannot join in a Writ of Error. Cro. Jac. 384. pl. 14.

Ideo concessum est for consideratum est is Error. Cro. Jac. 386. pl. 17.

Upon a Judgment in a Writ of second Deliverance upon a Demurrer, and because there was no Writ of second Deliverance certified upon a Writ of Error, the Judgment was reversed. Cro. Jac. 424. pl. 8.

The Writ of Error is in Judgment of Law a *Superfedeas* until the Errors are examined, affirmed or reversed. Cro. Jac. 534. pl. 19. 595.

Who shall have Error or Attaint.

A Bishop and Incumbent may join in Error.

He in Reversion or Remainder upon an Estate-Tail may have a Writ of Error.

How and when Execution shall be stayed upon bringing of a Writ of Error.

3 Jac. 1. cap. 8.
13 Car. 2. cap. 2.
sess. 2. sess. 8.
16 & 17 Car. 2. l. 8.

How an Assignment of general Errors to be.

When Error in Process cannot be alledged.

Error upon a Judgment in a Writ of false Judgment.

Ejectment against two; one an Infant, the Judgment was reversed as to both.

Error cannot be assigned against a Record.

The Principal and Bail cannot join in Error.

Concessum est for consideratum est is Error.

A Judgment reversed for want of a Writ of second Deliverance.

A Writ of Error is a *Superfedeas* till the Errors are determined.

No Bail filed; nor no Prisoner, cannot be assigned for Error, and why.

The Costs *de increment.* are not *ex assensu quer.* nor *ad requisitionem quer.* and held to be Error.

held to be Error.

You shall not assign that for Error, which you might have pleaded to the Action.

you shall not assign for Error, That he was Knight only, and not Baronet: So if a Man pleads by a wrong Name, and there is Judgment against him upon a Verdict, the Sheriff may well take him in Execution; but if Judgment were by Default, he cannot. *Roll. Rep. 50. 88. Moor, Case 996.*

So where a Feme Sole marries pending the Action.

Where the Plaintiff puts in insufficient Bail upon a Writ of Error.

3 *Jar. 1. rap. 8.*

If not justified, Execution will go.

But the Writ of Error remains still.

Where a Writ *de Executione Judicii* lies for the not certifying of a Writ of Error.

who receives those Returns, that no Return is made; yet Execution cannot be sued upon this Judgment, until there comes a Writ *de Executione Judicii* from the Chancery, commanding it to be done: For the Writ of Error was a *Superfedeas* to the Execution, until the Writ *de Executione Judicii* was sued out, and allowed.

Executor pays no Costs.

A Judgment is recovered against an Executor, upon which he brings his Writ of Error, and the Judgment is affirmed; yet he shall not pay Costs, because he is Executor, and it is *in antea Droit*. *Mich. 5 W. & M. B. R.*

It cannot be assigned for Error, that there was no Bail upon the File, and that the Defendant was not *in custodia Mar.* because it is contrary to the Record. *Cro. Jac. 568. pl. 7.*

The Judgment was, *quod recuperet dampna*, and Costs found by the Jury to 53 s. 4 d. *ne non* so much *de incremento per Curiam adjudicat.* and doth not say, *ex assensu quer.* or *ad requisitionem quer.* and *Cro. Jac. 587. pl. 10.* See Title Judgment.

You shall not assign that for Error, which you might have pleaded to the Action; as for the Purpose, where a Man is sued as Knight and Baronet, That he was Knight only, and not Baronet: So if a Man pleads by a wrong Name, and there is Judgment against him upon a Verdict, the Sheriff may well take him in Execution; but if Judgment were by Default, he cannot. *Roll. Rep. 50. 88.*

So where an Action is brought against a Feme Sole, and she marries, pending the Action: This does not abate the Action, but the Plaintiff may proceed against her till Judgment, and take her in Execution by the Name by which she is sued.

Where a Writ of Error is brought upon a Judgment given, and the Plaintiff in the Errors puts in Bail, as is required by the Statute of 3 *Jac. 1. c. 8.* and it is insufficient; and thereupon a Rule is given by the Clerk of the Errors to put in better Bail, or justify those put in, within four Days. If the Plaintiff doth not justify the Bail, the Chief Justice will order Execution upon the Judgment with a *Non obstante* to the Writ of Error and *Superfedeas*: But the Writ of Error remains still, and the Plaintiff in the Errors may proceed thereupon: It is only the *Superfedeas* to the Execution which is taken away. *Mich. 9 W. B. R.*

If a Writ of Error be brought to reverse a Judgment in an inferior Court, and the Record is not certified into this Court within four Days after the End of the Term wherein the Writ was returnable: Then upon a Certificate thereof by the Clerk

who receives those Returns, that no Return is made; yet Execution cannot be sued upon this Judgment, until there comes a Writ *de Executione Judicii* from the Chancery, commanding it to be done: For the Writ of Error was a *Superfedeas* to the Execution, until the Writ *de Executione Judicii* was sued out, and allowed.

A Judgment is recovered against an Executor, upon which he brings his Writ of Error, and the Judgment is affirmed; yet he shall not pay Costs, because he is Executor, and it is *in antea Droit*. *Mich. 5 W. & M. B. R.*

An Executor brings a Writ of Error; he shall not put in Bail, *causa qua supra.* 5 W. & M. 16 & 17 Car. 2. cap. 8.

Neither shall he put in Bail.

16 & 17 Car. 2. c. 8.

A Writ of Error lies in the King's Bench in England, to reverse a Judgment given in Ireland in the King's Bench there.

Writ of Error lies in the King's Bench here, to reverse a Judgment given in Ireland.

Judgment affirmed in the King's Bench in Ireland.

And also in the King's Bench here.

And Execution taken here for all the Damages and Costs.

A void Execution.

How Execution to be

W. B. R.

When the Writ of Error is to be allowed, and when Bail to be put in.

How it is where a Writ of Error is quash'd.

4 & 5 Anne.

Costs shall be paid.

A Plaintiff cannot quash his Writ of Error, but it may be discontinued.

What shall prevent Abatement of Writs of Error upon Judgments in the Exchequer.

16 Car. 2. rap. 2.

20 Car. 2. rap. 4.

An Ejectment was brought in the Common Pleas in Ireland, and a Judgment thereupon; and a Writ of Error brought in the King's Bench in Ireland, and there affirmed; and afterwards a Writ of Error was brought thereupon, returnable in the Court of King's Bench in England, and the Judgment affirmed here with Costs also: And an Execution was taken out in England, as well for the Damages and Costs of the first Judgment in Ireland, as also for the Costs upon the *Affirmetur* there, and also for the Costs of the *Affirmetur* here in England: And it was adjudged by the Court to be a void Execution; and a Writ of Restitution was thereupon awarded, for that the Record must be transmitted back to Ireland, to have Execution done there, which cannot be done by our Court here. Mich. 11

Formerly the Practice was, That after a Writ of Error shewn to the adverse Attorney, the Attorney who brought the Writ had four Days time to put in good Bail: But this Rule is altered; and at this Time it is now insisted upon to be allowed presently; or else it is not to be any Stay of Execution.

If a Writ of Error be wrong directed, or it appears that it varies from the Record when certified; the Court, upon producing of the Writ and Transcript into Court for such Variance, will quash the Writ of Error; but that *Cassetur breve* must be entred upon Record, and there must be Prayer of a new Writ of Error, if the Plaintiff in the Error thinks fit to sue it out. Hill. 9 W. But by 4 & 5 Anne, the Defendant in Errors shall have his Costs, as if Judgment had been affirmed, and to be recovered in the same Manner. 4 & 5 Anne.

The Court will not let the Plaintiff in Errors quash his own Writ of Error; but the Court may give leave to discontinue it. 5 Mod. 67.

The not coming of the Lord Chancellor or Lord Treasurer, or either of them, at the Return of any Writ of Error upon a Judgment in the Exchequer, shall cause an Abatement or Discontinuance of such Writ of Error; but if the two Chief Justices, or either of them, or any one of the great Officers are there, it sufficeth. See also another Statute. 20 Car. 2.

cap. 4.

In what Cases a Writ of Error, *Quod coram vobis residet*, lies.

Error. *Quod coram vobis residet*, lies in the King's Bench in these three Cases, viz. For Errors in Fact, as Infancy, (*Cro. Jac.* 254. pl. 10. 255.) false Latin, and Errors in Process; which Writ is allowed in Court without Bail; for which there is paid to the Secondary a Fee of 2 s. for the Allowance of it: And upon a Motion at the Side-Bar, the Court have granted a *Superfedas*; because none of the Statutes which oblige the Plaintiffs in Error to put in Bail, extend to this Writ of Error.

Error *quod coram vobis residet* lies not in the Exchequer-Chamber.

A Writ of Error *quod coram vobis residet* lies not in the Exchequer-Chamber. *Cro. Jac.* 620. pl. 6.

What Errors may be assigned in favour of the Plaintiff, and what not.

In Cases of Process and Delay which were for the Advantage of the Party, he shall not be admitted to assign this for Error: But where a Judgment is imperfect for want of a *Misericordia* or a *Capiatur*, it is an Error not amendable. 8 Rep. 59. a. But *Capiaturs*, except upon a Judgment upon *Non est factum*, are taken away by a late Statute made *tempore W. & M.* See Title Judgment.

Not to assign that for Error, which is for his own Advantage.

A Man shall not assign for Error, that which is for his own Advantage. 1 Leon. 150.

Where the Heir in Tail shall be barr'd of his Writ of Error.

A Recovery had after an erroneous Fine shall bar the Heir in Tail of his Writ of Error. *Cro. El.* 390.

Errors contrary to the Record cannot be assigned.

Upon a Writ of Error out of the Common Pleas, a Variance between the Plea-Roll and *Nisi Prius* Record was assigned, and a *Certiorari* sued out to certify the *Nisi Prius* Record; upon which there was a Return, That there was no Record of *Nisi Prius* filed: But notwithstanding, Judgment was affirmed; because the Error is contrary to the Record certified, which the Judge named in the *Postea* before whom the Cause was tried, had certified to the Court *in hac verba*. 5 W. & M. B. R. *Cro. Jac.* 11. pl. 15. 12.

No Writ of Error to be brought above twenty Years after the Judgment, Fine or Recovery.

No Fine, Common Recovery or Judgment, in any real or personal Action, shall be reversed, or avoided by any Error or Defect therein, unless the Writ of Error be brought, and prosecuted with Effect, within twenty Years after such Fine levied, or Recovery suffered, or Judgment signed, or entred of Record. Note, There is a Proviso for Infants, *Non compos, &c.* Stat. 10 & 11 W. cap. 14.

For what Matters Fines, nor Recoveries, shall not be reversed by Writ of Error.

No Fine, Proclamations upon Fines, or Common Recovery, levied, suffered or passed, shall be reversible by any Writ of Error for false and incongruous Latin, Razure, interlining, mis-entring of any Warrant of Attorney, or of any Proclamation, mis-returning or not returning of the Sheriff, or other want of Form in Words and not in Substance. 18 El. cap. 3. sect. 2.

18 Eliz. cap. 3. sect. 2.

The Bail cannot join with the Principal in a Writ of Error to reverse a Judgment given against the Principal: For the Principal must reverse the Judgment alone, if it be erroneous, because it was only given against him, and not against the Bail. See *Cro. Car.* 300. *pl.* 2.

Principal and Bail cannot join together in a Writ of Error.

Bail cannot have a Writ of Error in the Exchequer-Chamber by the Statute of 27 *Eliz. c.* which gives it only in nine Cases, and none other, which nine Cases are therein particularly mentioned. *Cro. Car.* 300. *pl.* 2.

The Bail cannot have a Writ of Error in the Exchequer-Chamber.

There is no Bail to be put in upon the bringing of a Writ of Error, upon a Judgment in an Action of Debt upon a Bond conditioned for Performance of Covenants, or upon a Bail-Bond: But where Bail is required to a Writ of Error upon a Judgment in an Action of Debt upon a Bond, the Bond must be for the Payment of Money only: And that is by the very Words of the Statute.

No Bail upon a Judgment on Bond for Performance of Covenants, or a Bail-Bond.

Also, if an Action of Debt be brought upon a Bond to perform Covenants, and there is Judgment by Default, without craving *Oyer* of the Condition; there, upon a Writ of Error brought, the Plaintiff in Errors must put in Bail: Because it doth not appear to the Court upon the Record, that the Condition was for Performance of Covenants. *Trin.* 13 *W. B. R.*

The Condition must be upon Record, and how it must be.

Where a Writ of Error is brought, and Bail is not put in as the Statute requires, the bringing of the Writ of Error is no *Superfedeas* to the Execution; for the Plaintiff may sue out his Execution notwithstanding: But the Writ of Error is still in Being, until there is a *Nolle prosequi* entered, or Judgment be affirmed or reversed.

The Allowance of a Writ of Error without Bail, is no *Superfedeas*.

All Writs of Error do issue out of the Court of Chancery upon Judgments in Courts of Record, and are returnable in this Court, (except those upon Judgments given in this Court which are returnable in the Exchequer-Chamber; and also upon Judgments in the Court of Exchequer, the Sheriffs Court of London, and the Cinque-Ports) and are directed to Courts of Record, to certify into this Court the Record and Process of the Judgment *cum omnibus ea tangentibus*: But Writs of False Judgment issue likewise out of Chancery, and are directed to County and Hundred Courts, &c. and are returnable only in the Court of Common Pleas.

Writs of Error issue out of the Chancery, and where returnable.

Writs of False Judgment returnable only in *Com. Banco*.

Upon a Writ of Error returnable in the Exchequer-Chamber; before the Record transcribed, one of the Plaintiffs in the Writ of Error died; and thereupon the Plaintiff in the Action taking the Writ to be abated, sued out Execution upon his Judgment without any Rule of Court to warrant it, and took the surviving Defendant in the Action in Execution. And the Court held

How to proceed to Execution, where one of the Plaintiffs in Error died, before the Transcript sent to the Exchequer-Chamber.

held this to be irregular, and superseded the Execution; because the Plaintiff in the Action should have applied himself to the Court upon the Death of one of the Plaintiffs in the Writ of Error, and apprized the Court of his Death, that the Chief Justice might take Notice of it, in order to make a due Return when called for. *Brace & al' vers' Penoyer. Trin. 9 W. B. R.*

How to proceed when one of the Plaintiffs in Error dies, after the Transcript returned into the Exchequer-Chamber.

After the Record is transcribed into the Exchequer-Chamber, one of the Plaintiffs in the Writ of Error dies; this abates the Writ. But the Plaintiff in the Action cannot sue out Execution upon his Judgment until there is judicial Notice by a Remittitur of the Transcript from the Court of the Exchequer-Chamber to the King's Bench; for till that is done, the Hands of the Court of King's Bench are tied up by their Mittitur to the Exchequer-Chamber.

What the Court of Exchequer can do, and what not.

The Court of the Exchequer-Chamber have not any Authority but only to reverse or affirm the Judgment, but cannot make Execution. Cro. El. 108. pl. 3.

Defendant in Error dies after *In nullo est erratum*, it is no Abatement of the Writ.

Defendant in Errors in the Exchequer-Chamber died after In nullo est erratum pleaded, and they proceeded to Reversal without a new Writ, Quod coram vobis residet, or a Sci. Fa. against the Executors ad audiendum errores; and upon an Execution sued after the Death of the Party, a Restitution was granted, because it is no Abatement: But a Sci. Fa. might and ought to have been sued out to the Executors. Show. Rep. 188.

Error lies not in the Exchequer-Chamber upon a Judgment on a Sci. Fa.

Error does not lie in the Exchequer-Chamber upon a Judgment upon a Sci. Fa. only in the King's Bench, because it is casus omissus out of the Statute of Queen Elizabeth, which gave Writs of Error returnable in the Exchequer-Chamber upon Judgments recovered in the King's Bench by Bill.

A Writ of Error upon a Judgment affirmed, and a Sci. Fa. thereupon was quash'd.

Where a Judgment is affirmed in the Exchequer-Chamber, and there is afterwards a Sci. Fa. and a Judgment thereupon, and a Writ of Error brought tam in redditione judicii of the first Judgment, which

was affirmed before, quam in adjudicatione executionis upon the Sci. Fa. the Court upon Motion quash'd it.

The Bail cannot join the Principal in a Writ of Error with himself out of an inferior Court.

A Writ of Error was brought by the Bail, upon a Judgment recovered against him upon a Sci. Fa. as Bail in an inferior Court. And it was tam in redditione judicii against the Principal, quam in adjudicatione against the Bail; and upon Motion, the

Court quash'd the Writ of Error, quoad the Principal only, and the Bail proceeded to reverse the Judgment against himself. Burr & Attwood. 10 W. B. R.

After Issue, the Defendant in Errors died.

Upon a Writ of Error upon a Judgment in the Common Bench, after In nullo est erratum pleaded, the Defendant in the Errors died; and the Plaintiff in

in the Errors sued out a *Sci. Fa.* against the Executor of the Defendant in Errors *ad audiendum errores*, and the Executor sued out a *Sci. Fa. quare executionem non.* The Plaintiff pleaded the Writ of Error pending, and held a good Plea; and also, that the Plaintiff in the Error might proceed, which he did, and reversed the Judgment. *Mich. 36 Car. 2. B. R.*

Plaintiff in Error sues out a *Sci. Fa. ad audiendum errores.*

Executor sues out a *Sci. Fa. quare, &c.*

The Plaintiff pleaded the Writ pending; and good.

A Writ of Error is brought, and after the Record is removed, the Defendant in the Writ of Error dies; the Plaintiff sues out a *Sci. Fa.* against the Executors of the Defendant, against whom two *Nichils* are returned; and the Plaintiff proceeded to reverse the Judgment. And *per Cur.* a Diversity was taken between the Death of the Plaintiff and Defendant in Errors: Where the Plaintiff dies it shall abate; but not where the Defendant dies.

Where the Plaintiff dies, the Writ of Error shall abate; but not where the Defendant dies.

Also, That the Executors upon two *Nichils* returned, are made Parties to the Writ of Error; because the Damages in the Judgment go to them. *Yelv. 112, 113.*

Executors upon two *Nichils* returned, are made Parties to the Writ of Error.

He that brings a Writ of Error to reverse a Judgment given in a superior Court, by the Statute of 3 Jac. 1. cap. 8. in all Cases after a Verdict; and in all Actions of Debt by Confession or Default; and in all Actions of Debt upon a Bond, where the Condition is for Payment of Money only; must put in good Sureties, to prosecute his Writ of Error with Effect, and pay the Debt and Damages to be recovered, if Judgment shall be affirmed: For it is reason the Party shall have a Recompence for his causeless Vexation and Delay: But inferior Courts shall in all Cases, as well upon Verdicts, as other Judgments, by Default or Confession in Debt, or otherwise, have their Writs of Error allowed, and a *Superseas* thereupon, without putting in of Bail, they being omitted out of the several Statutes, which require Bail to be put in by the Courts at *Westminster*.

Upon what Writs of Error, and in what Courts, Bails are to be put in.

3 Jac. 1. cap. 8.

A Judgment is recovered against three Defendants, and they bring a Writ of Error, and afterwards one of them releases the Errors; he may be summoned and severed, and then the other two shall proceed to reverse the Judgment. See 6 Rep. 26. a. b.

Three Plaintiffs in a Writ of Error: One releases: He may be summoned and severed.

Error in Fact was tried, and a Verdict for the Defendant in the Errors, and Costs were ordered to be tax'd, upon the Statute of 3 H. 7. cap. 10. *occasione dilationis executionis.* 6 W. B. R.

Costs upon a Verdict on a Trial of Errors in Fact
3 H. 7. cap. 10.

Where the Defendant in Errors pleads a Release of Errors, and a Verdict is found for him, he shall have no Costs; for that the Judgment is not to be affirmed: But the Judgment shall be, That

Where the Defendant shall not have Costs upon a Verdict of Errors in Fact.

the

the Plaintiff in the

Because the Judgment is, That he be barr'd of his Execution.
3 D. 7. c. 10.

The Attorney's Name with a Blank,

Attachiatus for *Summonitus*, is Error.

The first Process in an inferior Court was a *Capias*, which should have been a *Summons*, and therefore reversed. *Cro. Jac.* 261. pl. 23.

Death after Verdict, and before Judgment, assigned for Error.

In nullo est erratum is pleaded, when it should have been a Demurrer.

A dead Man pleads.

No Damages or Costs where Execution is executed, and why.
3 D. 7. cap. 10.

Eight Defendants in Trespas, two are Infants.
They appear by Attorney.

revers'd : But they ought to have pleaded to the Infancy assigned for Error, so that an Issue thereupon might be tried. 1 *Lev.* 294.

Where a Judgment is revers'd in Parliament, they give the same Judgment as the King's Bench ought to have done.

Bench ought to have done when they gave Judgment for the Defendant. *Hill.* 6 W. See *Hill.* 25 & 26 Car. 2. Rot. 411. B. R.

How a *Judicium revocetur in Banco Regis* shall be.

Errors *Nil capiat per Breve suum de Errore*, and not that he be barr'd of his Writ of Error. Note, Here was neither Nonsuit, Discontinuance, or Judgment affirmed, as the Statute of 3 H. 7. c. 10. requires. 6 W. See *Show. Rep.* 50.

A Blank left for the Attorney's Christian Name in the Warrant of Attorney was held to be Error. *Cro. El.* 59. 75. 328.

Attachiatus for *Summonitus*, adjudged to be Error after a Verdict in an inferior Court. *Cro. Jac.* 108. pl. 4.

Error in Fact (*viz.* Death) assigned after Verdict, and before Judgment; and also Errors in Law assigned, *viz.* That Judgment was given for the Plaintiff, whereas it ought to have been given for the Defendant. The Defendant in the Error pleads *In nullo est erratum*, whereas he ought to have demurred for assigning double Errors; but Judgment was affirmed, because the Record is, That the Party pleaded to be dead appears and pleads, and so it is contrary to the Record.

Note, That if the Tenant or Defendant do not sue out a Writ of Error before Execution executed, the Plaintiff shall not have his Damages and Costs, because the Writ of Error is not then *in dilacione executionis*. See *Cro. Jac.* 636. pl. 3. See Title Costs.

Eight Defendants, two are Infants. In Trespas against them, they all appear by Attorney, which is assigned for Error. This is Error in Fact, and the pleading of *In nullo est erratum*, is a Confession of the Error in Fact; and the Judgment was

Where a Judgment given in the King's Bench for the Defendant, upon an Action by Original, is revers'd in Parliament upon a Writ of Error returnable there; the Parliament will give a new Judgment for the Plaintiff; as the Court of King's

Where a Judgment is given against the Defendant, and a Writ of Error is brought, and the Judgment is reversed, there shall be only a *Judicium revocetur*, &c. entred with Costs; and no new Judgment be entred by the Court of King's Bench.

But

But where there is a Judgment given for the Defendant, and the Plaintiff brings a Writ of Error, and the Judgment is reversed; there the Court which reverses the Judgment, shall give Judgment for the Plaintiff, as the other Court ought to have done; unless the Judgment be reversed for something which is not to the Matter of the Action, as a false Entry, or an *Ideo confessum est*, for *Ideo consideratum est*, or the like. *Pasch. 1 Anne Regina, B. R. Telv. 117, 118.*

How it shall be in the King's Bench, where a Judgment is reversed by Writ of Error brought by the Plaintiff in the Action.

Where Judgment was reversed, and a new Judgment given for the Plaintiff. *1 Lev. 310.*

If one brings a Writ of Error upon a Judgment in the Common Pleas, and doth not, after an eight Days Rule given, certify the Record into this Court; then a *Nolle prosequi* may be entered, and the Plaintiff may sue out his Execution: And if there be a *Superseas* to the Execution in the Sheriff's Office, then there must be a Clause in the Writ to this effect: *viz. Brevis Domini Regis de Superseas super brevi de errore prius in contrarium inde directus in aliquo non obstante.*

Where a *Nolle prosequi* may be entered upon a Writ of Error out of the Common Pleas.

An inferior Court proceeds to Judgment after an *Habeas Corpus* allowed; it is Error. *Cro. Car. 261. pl. 7.*

Proceeding to Judgment after an *Habeas Corpus* allowed, is Error.

Tertendants cannot plead in Abatement of a Writ of Error, but only in Bar: For the *Sci. Fa.* against them is not *ad audiendum Errores*, but *ad audiendum Processus & Recordum*. *1 Lev. 72.*

Tertendants cannot plead in Abatement of a Writ of Error, but only in Bar.

It cannot be assigned for Error, that the Defendant appeared by *J. S. Attornatum suum*, and Judgment by *nil dicit* against him the said *J. S.* then, nor at any Time during the Term, being an Attorney of the C. B. *Cro. Jac. 521. pl. 5.*

That the Person who appeared as Attorney, was no Attorney, cannot be assigned for Error.

Matter which proves a Writ of Error abateable, is not assignable for Error; as in an Ejectment Entry was assigned after Verdict, and before Judgment, and naught; but only Matter which proves it abated, is assignable. *1 Lev. 155.*

Matter which abates a Writ of Error is not assignable, as Entry after Verdict, &c.

The Plaintiff in the Errors assigns for Error that he now is, and at the Time of bringing the Action was, a Knight of the Bath; so that the Plaintiff ought to have sued him so, and not as Knight and Baronet: But for that he appeared to that Name, and pleaded thereto, he hath concluded himself. *Cro. Jac. 482. pl. 15. Cro. Jac. 104. 371.*

Matter which ought to be pleaded in Abatement cannot be assigned for Error.

The Vouchee in a Common Recovery was within Age, and the Question was, Whether he can avoid this for Error after his full Age? And adjudged, that upon a Writ of Error to reverse a Common Recovery, Infancy shall be tried by Inspection as well as in the Case of a Fine; but when he appears by Attorney and suffers it, it may be reversed at full Age, but not where he appears by Guardian. *1 Sid. 322. pl. 14. 1 Inst. 380. b. 2 Keb. 141.*

Where a Fine or Recovery levied or suffered may be reversed for Infancy.

A Common Recovery suffered by an Infant by Guardian is not erroneous.

Common Recoveries are now the common Assurances.

nor is there any Pretence for an Infant who appears by his Guardian, more than for any other Person at full Age, and it stands with Law that it may be, there being very many Precedents of such Recoveries. *Cro. Car. 307. pl. 81. 1 Sid. 321. pl. 14.*

Debt lies upon a Judgment in the King's Bench after Error brought.

No Diminution to be alledged after *In nullo est erratum*, without a particular Rule of Court.

Court may, if they think fit, order a *Certiorari* to inform their Consciences, and this as well to reverse as affirm a Judgment. 4 *Annae, B. R.* Note, If it be awarded at the Prayer of the Party without a Rule of Court to warrant it, it is ill.

What Errors is sufficient to reverse an Outlawry after Judgment.

A Writ of Error allowed at the Assizes upon a Verdict, and Judgment in a *Quare Impedit*.

other *Quare Impedit*, a Writ of Error was brought upon a Judgment at the Assizes, and the Transcript was made by the Clerk of the Assizes. 4 *Annae Reginae*.

Upon a Writ of Error to reverse a Recovery, the Court would not proceed upon two *Nichils*, but would have a *Sci. feci* returned.

Error in Process, how to be.

A Common Recovery is had against an Infant by Guardian; and Error was brought to reverse this Recovery, and assigned for Error that Judgment was given against him by Default being an Infant: But resolved that it is not Error; for the Judgment is not given upon the Default of the Infant, but upon the Departure of the Vouchee in despite of Court: And Common Recoveries are common Assurances, and ought not to be shaken;

Debt lies upon a Judgment in the King's Bench after Error brought; because the Record is still in the Court there, and the Writ of Error is only a *Superfedeas* to the Execution. 1 *Lev. 153.*

After *In nullo est erratum* (which joins the Issue) is pleaded, neither the Defendant in the Errors, nor the Plaintiff in the Errors, can alledge Diminution without the Leave of the Court: But the

Upon a Writ of Error to reverse an Outlawry after Judgment, the Exceptions taken were, That it was not said where or when the County-Court was held, and therefore it was reversed. 3 *Annae, B. R.*

A Verdict was at the Assizes in a *Quare Impedit*, and Judgment there prayed by the Plaintiff, and he had it; and the Defendant immediately allowed a Writ of Error upon it. *Lutw. 594.* Also in an-

Upon a Writ of Error to reverse a Judgment upon a Common Recovery, and two *Scire Facias*'s sued out *ad audiendum errores*, and *Nichils* returned; the Court would not proceed notwithstanding to examine the Errors until a *Sci. feci* returned; because it concerns Mens Estates and Freeholds, *Trin. 34 Car. 2. B. R.* See 3 *Cro. 431. 472. 739. Dyer 320. 201. 301.*

If there be Error in the awarding of an Execution, the Execution only, and not the Judgment, shall be reversed. *Hob. 90.*

Upon

Upon a Writ of Error to reverse a Fine, it was assigned for Error, that the Writ of Covenant bore *Teste 2 Jan. returnable Oct. Hill.* and the *Dedimus* bore *Teste 3 Jan.* which was before the Return of the Writ of Covenant; and it could not be then said *pend. Curia*. It is good enough, for immediately upon the Purchase of the Writ it may be said *pend. Cur.* *Cro. Jac. 11. pl. 15.*

Errors assigned in a Fine, how answered.

Error upon a Fine by Tenant in Tail; the Tenant in the Writ of Error pleads a Common Recovery had against the Conuzee of the Fine with Voucher of the Tenant in Tail, the Conuzor: And held, that when Tenant in Tail comes in as Vouchee, he had barr'd the Issue of his Writ of Error to reverse the erroneous Fine that he himself had levied. *Moor, Case 499.*

When Tenant in Tail comes in as Vouchee in a Recovery, it bars his Issue of his Writ of Error to reverse his erroneous Fine.

If the Bill upon the File or Writ of Enquiry varies from the Declaration, it is Error. *Cro. Jac. 294. pl. 14.*

Where the Bill or Writ of Enquiry varies from the Declaration, it is Error.

Error lies not upon a Judgment *quod computet*, for this is no other than an Award, and no final Judgment. *Cro. Jac. 356. pl. 14.*

It lies not upon a Judgment *quod computet*, and why.

But it lies upon a Judgment by Default in Ejectment before a Writ of Enquiry of Damages sued out, and Judgment had thereupon, because here is a Judgment already *quod recuperet terminum*. *Latch 212.*

Where it lies upon the interlocutory Judgment before a Writ of Enquiry, and Judgment upon it.

Error brought upon a Judgment in a Formedon *de uno messuagio & duabus acris terræ & pasturæ*, and says not how much Land and how much Pasture, and held to be erroneous for Incertainty. Then it was prayed that it might be affirmed for the Messuage; but the Court said that could not be, for the Judgment being intire, it cannot be reversed for Part, and affirmed for Part. *471. pl. 3.*

A Judgment in a Formedon reversed for Incertainty, it being *de duabus acris terræ & pasturæ*.

A Judgment cannot be affirmed for Part, and reversed for Part.

A Writ of Error was brought upon an erroneous Judgment given by Consent of Parties, upon a Paper-Rule of Court, and the Judgment was reversed; because Consent of the Parties cannot change the Law. *Hob. 5.* But had the Consent been entred upon the Record, and made Part of it, it then would have been good. *1 Jones 199. Cro. El. 664.*

Where Consent of the Parties shall make an erroneous Judgment good, and where not.

A Writ of Error was brought upon a Judgment in the Common Bench, after a Trial at the Bar, and Bills of Exception to the Evidence. *Lutw. 905. b.*

Error brought where there was a Bill of Exceptions.

Where Infancy is assigned for Error and tried by Inspection, and the Judgment reversed, and what Proceedings was afterwards, and how the Inspection was saved. *Cro. Jac. 59. pl. 5.* See Title *Audita Querela*.

Infancy assigned for Error. Tried by Inspection. Judgment reversed. How the Inspection saved.

It must be set forth how the inferior Court is holden, whether by Charter or Prescription.

So also the Names of the Stewards before whom held must be shewn.

Process awarded *secundum consuet. Cur.* when the Court was erected *i Maria*, it is erroneous.

Upon a Writ of Error out of an inferior Court, it was not shewn by what Authority it was holden, whether by Charter or Prescription; and held to be Error. *Cro. Jac. 184. pl. 3. 493. pl. 14.*

Also the Style of the Court is *coram Senescallo & Ballivo Domini Paget*, and doth not shew their Names; and this was also held to be Error. *Ibid.*

Where in an inferior Court the Process is awarded *secundum consuet. Cur.* the Court being held by Vertue of Letters Patents *i Maria*, it is erroneous. *Cro. Car. 143.*

Escape.

See Prison and Prisoner.

Escape, what.

Escape is where one that is arrested, or a Prisoner legally committed, and makes his Escape before he be delivered by due Course of Law.

If a Prisoner in Execution escape, the Party may either have an *alias Ca. sa.* or Case against the Sheriff.

If a Prisoner taken in Execution by the Sheriff, makes a tortious Escape, the Party at whose Suit he was taken in Execution, may either have an *alias Ca. sa.* against the Party that escaped, to take him again in Execution, or an Action upon the Case

against the Sheriff that suffered him to escape. *Mich. 23 Car. B. R.* But if the Sheriff do voluntarily permit a Prisoner to escape, there the Prisoner is discharged from the Plaintiff, and he must bring his Action of Debt against the Sheriff for this Escape.

But if the Sheriff permits an Escape, he may have another Execution.

But see *1 Lev. 211.* If the Sheriff permits a voluntary Escape, the Party may have a new Execution.

Where Misprision in an Execution is not assignable for Error.

Where the Plaintiff had recovered *55 l. 10 s.* and the *Ca. sa.* upon which the Defendant was taken in Execution was only for *51 l. 2 s.* and the Plaintiff in an Action of Debt for an Escape recover'd against the Sheriff the said *55 l. 10 s.* this Misprision in the Execution is not assignable for Error. *2 Saund. 101.*

For Debt upon Escape out of Execution, see the Statute of *1 R. 2. cap. 12.* and *21 Jac. cap. 16.*

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An Administrator may bring an Action of Escape, for an Escape suffered of a Prisoner in Execution at the Suit of the Intestate in his Life-time, *Trin. 23 Car. B. R.* To recover what the Intestate was damaged in his Estate by reason of his Escape.

Administrator may have an Action for an Escape in the Intestate's Life-time.

But an Action of Escape will not lie against the Executor or Administrator of the Sheriff or Prison-keeper for the Escape of a Prisoner in the Time of the Testator or Intestate, because it is merely personal. *& moritur cum persona.* See *Latch 167.*

But not *contra* against Administrator or Executor of a Sheriff.

An Escape in one Place is an Escape in all Places; for if a Prisoner be once escaped and at large, it shall be intended he is confined to no Place, but may go at large where he pleaseth; so that for an Escape, the Party whose Prisoner is escaped, may bring an Action for this Escape in what County he pleaseth, for the Action is not local or fixt to any certain Place, *Trin. 24 Car. B. R.* but transitory, and may be laid in any Place.

An Escape in one Place is so in all Places.

The Sheriff may bring an Action upon the Case against a Prisoner that escapes from him. *Cro. El. 393. Moor 518.*

Sheriff may bring Case against a Prisoner that escapes.

Where a Man is in Execution, and a *Habeas Corpus* goes to the Sheriff to bring him up to the Court, and the Sheriff brings him out of the usual Road through another County, or lets him go out of the Inn over Night into another County, but he returns in the Morning, and at the Day of the Writ the Sheriff hath his Body in Court as the Writ requires; this is no Escape. *Boynton's Case 3 Rep. 44. and Plow. Com. 37. a.* But where a *Habeas Corpus* was granted for a Prisoner in Execution to go to the Assizes to be Evidence in a Cause, and after his Evidence given he went five Miles beyond, and there fell sick of the small Pox and died; this was adjudged an Escape; but if he had died coming up to London immediately after the giving of his Evidence, it had been no Escape. *Mosdel's Case, tempore Car. 2.*

What shall be said to be an Escape of a Man in Execution.

A Prisoner may be taken upon an Escape-Warrant upon a Sunday, by *5 Anne Sess. 2.* How and by whom the Warrant to be granted, see Title Prison and Prisoners.

May be taken upon an Escape Warrant upon a Sunday.
5 Anne Sess. 2.

Debt shall lie upon an Escape upon a Commitment from the Court of Chancery or Exchequer for not paying Money upon a Decree. *5 Anne Sess. 2.*

Debt lies upon an Escape for not paying of Money upon a Decree.
5 Anne Sess. 1.

A Prisoner who is in the Rules, or out upon his Day-Rule, and about his Business, *viz.* advising with his Counsel, or consulting with his Creditors, cannot be taken upon an Escape-Warrant; but if he goes into the Country, or to a Fair, or to a Play, or to any such sort of Place for his Diversion or Idleness, he may be taken up, though he hath a Day-Rule. *Trin. 6 Anne B. R.*

Where a Prisoner may be taken up who is out upon a Day-Rule, and where not.

How a Declaration
must be in case upon an
Escape.

Case was brought for an Escape upon an Arrest, and shews no Cause of Action. In the Declaration it is naught. But if he had said, that the Prisoner was indebted to him in 40 s. and proved at the Trial but 30 s. it had been good. 2 Lev. 85.

Rescue pleaded to an
Escape on mesne Process,
and good.

Case lies upon a Pro-
mise to save a Sheriff
harmless from Escapes.

A Prisoner in Execu-
tion suffered to escape,
may be retaken.

the Plaintiff will permit him to escape, he cannot afterwards retake him. *Lutw.* 1266.

Where two are bound,
and a Judgment against
one, who is suffered to
escape, the other is sued,
and pleads this; it is no
Plea, and why.

Case lies for an Escape
upon *Excom. Ca.*

So also upon an Out-
lawry, and why.

Case *Qui tam, &c.* lies
against a Sheriff for an
Escape upon an Outlaw-
ry.

So also for the Plain-
tiff himself.

It is good both Ways.

One in Execution
escapes, he may be re-
taken.

For he shall never take
Advantage of his own
Wrong.

The Sheriff may pur-
sue his Prisoner all *Eng-
land* over.

Case was brought for an Escape upon an Arrest, and shews no Cause of Action. In the Declaration it is naught. But if he had said, that the Prisoner

was indebted to him in 40 s. and proved at the Trial but 30 s. it had been good. 2 Lev. 85.

In an Action for an Escape upon a mesne Pro-
cess, the Defendant pleads a Rescue without a Re-
turn of it, and held good. 2 Lev. 144.

A Promise to save the Sheriff harmless from all
Escapes, if he would permit one taken in Execution
to stay three Days in his House; which he did, and
the Prisoner escaped; and held that the Action well
lies. 2 Lev. 17.

A Man is in Execution, and he escapes out of
the Custody of the Gaoler; he is not discharged
from the Execution, but may be retaken. But if

the Plaintiff will permit him to escape, he cannot afterwards retake him. *Lutw.* 1266.

Two are bound in a Bond, Judgment and Exe-
cution is against one, who is taken and suffered
to escape; the other is sued, and pleads this Mat-
ter; and adjudged to be no Plea: For the Escape of
the Prisoner, though by the Gaoler's Permission, is
no Discharge of the Debt. *Cro. Jac.* 531. pl. 14. 532.
Cro. Car. 75. pl. 4.

Case lies for the Escape of one taken upon a
Writ de Excommunicato capiendo. *Lutw.* 123.

So also for the Escape upon an Outlawry, be-
cause the Plaintiff is there delayed of his Debt. *Cro.
El.* 652. pl. 9.

An Action on the Case lies for the King and
Party *Qui tam, &c.* for an Escape upon a *Capias Ut-
lagatum*; for the King is to have the Benefit thereby,
although the Party is to have Benefit thereby. *Cro.
Jac.* 360. pl. 22. 532. pl. 16. 533. Also it lies for
the Plaintiff himself, for he may bring his Action
of Debt for what he hath lost: It is good both
Ways. *Cro. Jac.* 620.

A Person in Execution escapes, he may be taken
again in Execution; for having no Benefit of it,
it is as none. Also the Defendant shall never take
Advantage of his own Wrong by his Escape. *Cro.
Car.* 255. pl. 7.

Where a Prisoner in Execution escapes, yet the
Sheriff may pursue him into that or any other
County; and if he retakes him upon a fresh Pur-
suit before Action brought, this shall excuse the
Sheriff. 3 Rep. 44. b. 55. a. b.

Escape.

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The old Sheriff omits the turning over to the new Sheriff of a Prisoner in Execution in his Custody; this is an Escape in the old Sheriff. 3 Rep. 71, 72.

Old Sheriff omits turning over of a Prisoner, this is an Escape.

The retaking must be before the Action of Escape brought, or else it will not do. Cro. Jac. 657, 658, 659.

The retaking must be before the Escape brought.

See the Act made 8 & 9 W. cap. 26. For the more effectual Relief of Creditors in case of Escapes, and for preventing Abuses in Prisons, and pretended Privilege-Places.

About Escapes.
8 & 9 W. cap. 26.

Escheator.

The Office of Escheator is an ancient Office, and was of great Use to the Crown formerly: But now it is become useless, ever since the Court of Wards and Liveries was taken away by Act of Parliament.

Escheator, what.

The King may by his special Commission make one or more Deputy-Escheators to find an Office; and this hath been used to be done after the Death of a Nobleman, or other Person of great Quality. Pasch. 24 Car. 1. B. R. For the Escheators were not Officers for Life; but appointed every Year by the Lord Treasurer of England.

The King by his Commission may make Deputy-Escheators.

Escheat extinguishes Custom of Gavelkind.

1 Keb. 492. pl. 43.

Escheat extinguishes Custom of Gavelkind.

On Failure of male Cousin by Border-Service.

Idem 925. pl. 30.

On Failure of male Cousin.

Preserves Tenancy as Parcel, not so by Purchase.

2 Keb. 28. pl. 58.

Where it preserves Tenancy.

Of Copyholder on Death of male Cousin, good.

Idem 111. pl. 51.

Of Copyholder on Death of male Cousin, good.

For want of male Cousin on Death of eldest Daughter, good by Custom. Idem 672. pl. 43.

Where good by Custom.

Holds only so long as Person attaint hath issue.

3 Keb. 9. pl. 12.

Holds only whilst Person attaint hath Issue.

Of Tenancy, makes it Parcel of Mesnalty; contra on Devise of Mesne to Tenants. Idem 81. pl. 24.

Makes Tenancy Part of Mesnalty.

On Attainder of middle Brother in the Life of the eldest Brother, having Issue, &c. Idem 6. pl. 5.

On Attainder of middle Brother in Life of eldest having Issue.

Of Remainder to right Heirs on Attainder, &c. Idem 251. pl. 10.

Of Remainder to right Heirs on Attainder.

Escrow.

Escrow.

Escrow, what.

The Delivery of a Deed as an Escrow is the Delivery of it to a Stranger to be his Deed, when such a Thing (agreed upon between them) is performed.

Cannot be delivered to the Party himself as an Escrow, and why.

The Delivery of a Deed to the Party himself cannot be averred to be an Escrow. *Cro. El.* 520. *pl.* 47. See *Co. Litt.* 31. *a.* *Hob.* 246. See *Cro. El.* 835. For if it did, then a bare Averment without any Writing would make void every Deed. *Cro. El.* 884. *pl.* 21.

Essoin.

An Essoin, what.

Essoin is where an Action is brought, and the Plaintiff or Defendant cannot conveniently appear at the Day in Court; then he shall be essoined to save his Default.

What an Essoin is, see further in *Lutw.* 861.

Essoin-Roll is a Record of the Court.

The Essoin-Roll in the Court of Common Pleas is a Record of the Court, and remains in the Custody of the Clerk of the Essoins. *Pasch.* 23 *Car.* 1. *B. R.*

What the Essoin-Roll is.

The Essoin-Roll is a Roll wherein is entred, that the Party was essoined to another Day for some Excuse that he could not then appear.

If the Declaration be delivered after the Essoin-Day, the Defendant is not bound to plead that Term.

If a Declaration be delivered to the Defendant after the Essoin-Day, the Defendant is not bound to plead that Term, so as to try the Cause. 3 *Julii*, 1652. *B. S.* For it is accounted a Declaration of that Term, and not of the precedent Term.

Where the Tenant shall not essoin after Appearance.

3 *E.* 1. *cap.* 42.

In Writs of Assize, Attaints and *Juris utrum*, after the Tenant hath once appeared in Court, he shall be no more essoined; but he may make his Attorney to sue for him if he will, or the Assize or Jury shall be taken through his Default.

Estate.

Estate.

See Inheritance.

Estate is that Title or Interest that a Man hath in Lands or Tenements; as Estate in Fee Simple, Fee Tail, Conditional, &c. See Litt. Book 3. cap. 7.

Estate, what.

No Estate can be limited to commence after a Fee simple; because a Fee-simple is the largest Estate that can be imagined in the Eye of the Law, and shall not be supposed to have a Possibility to have an End or Determination. *Trin. 23 Car. B. R.*

No Estate can be limited to commence after a Fee-simple.

The Law doth not in Conveyances of Estates admit Estates to pass by Implication, as being a way of passing Estates not agreeable to the Plainness required by the Law in the transferring of Estates. *Vaugh. fol. 261, 262.* But in Devises they are admitted with due Restrictions. *Ibid.*

The Law admits not Estates to pass by Implication.

No Estate of Freehold can commence *in futuro*. *Cro. El. 254, 255.*

Freehold cannot commence *in futuro*.

An Estate vested cannot be defeated by Covenant, but by Condition it may.

An Estate vested cannot be defeated by Covenant.

A Man may have an Estate three other Ways besides Descent, *viz.* by Bargain and Sale for Money; by Feoffment and Livery without Consideration of Money, and by way of Remainder. *Per Saunders Serjeant in Fogasse's Case, Plow. Com. 11.*

The several Ways by which a Man may have an Estate.

Rent granted in Fee with a Proviso that the Grantee may enter and retain until he be satisfied out of the Profits, he may make a Lease to try the Title in Ejectment. *1 Lev. 170.*

Where the Grantee in Fee may make a Lease to try the Title in Ejectment.

A Man may take an executory Estate, or Estate in Remainder, who is no Party to the Deed. *Carter, Fol. 6.*

One who is not Party to the Deed, may take an executory Estate, or in Remainder.

To an Estate-Tail it is requisite in all Gifts and Limitations of Uses, that the Heir be limited to be begotten of some Body in certain, either by express Words, or Words which tantamount, for the pre-

The Words *de corpore*, not absolutely necessary to make an Entail, if there are Words tantamount.

cise Words (*de corpore*) are not necessary to the Creation of an Estate-Tail; so long as there are Words tantamount; as to one & *heredibus suis de se exantibus*, &c. 7 Rep. 42. a.

A Man hath an Estate in B. in Fee, and deviseth in these Words: *I give all my Estate in B. to J. S. without the Word Heirs*: Here J. S. shall have the same Estate in the Land as the Devisor had; because he giving *all his Estate*, whatever Estate he had shall pass to the Devisee.

Where a Man may give an Estate of Inheritance after his Death, and where not.

Where a Man is seised in Fee, he cannot by any Matter in Fact give away the Inheritance after his Death, and so leave a particular Estate in himself; but perhaps it may be done by matter of Record. *Cro. El. 29. pl. 1.*

Estoppel.

An Estoppel, what.

Estoppel is where a Man is concluded and forbidden by Law to speak against his own Act or Deed; nay, though it be to say the Truth.

Jurors are not estopped to find any thing that is not of Record.

Jurors are not estopped to find any thing that is out of the Record; as if upon *Non est factum* upon a Bond, it appears at the Trial that the Party who sealed this Bond was dead before the Date of it; yet if the Party sealed the Bond, it shall bind his Executors; because the Deed takes its Effect from the Delivery, not from the Date. 2 Rep. 4, 5.

Lessee for Years cannot plead that the Plaintiff *nil habuit*, &c.

The Lessee for Years by Indenture cannot plead that the Plaintiff *Nil habuit in tenementis tempore dimissionis*, because he hath estopped himself by his own Act under his Hand and Seal. 9 Rep. 60. *Cro. Jac. 312.*

Where the Law gives Liberty to confess and avoid, a Man shall not be estopped to plead such Matter for his Defence.

Where one hath Liberty by Law to confess and avoid the Matter which the Plaintiff doth set forth in his Declaration against him, there he cannot be estopped to plead such Matter for his Defence. 29 Jan. 1649. *Hill. B. S.* For this were to deprive him from the Benefit of the Law.

Estoppel must be mutual. Feme cannot be estopped.

An Estoppel ought to be mutual on both Parts, and the Deed of a Feme-Covert cannot estop her. *Cro. El. 701.*

What is an Estoppel, and what not.

A general Recital is no Estoppel, but a Recital of a particular Fact is. *Show. Rep. 59.*

Where a Recital is an Estoppel.

Although generally a Recital is no Estoppel, yet where the Recital is material, it is. 2 Leon. Case 17. See *Cro. Eliz. 362. pl. 24.*

Estoppel.

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One shall not be estopped, but of that which he may have a Traverse. *Raym.* 458.

Where there shall not be an Estoppel.

Estoppels ought to be pleaded; and in pleading the Party ought to conclude his Plea, and rely upon his Estoppel, and not demand Judgment *Si Actio.* 4 *Rep.* 53. a.

How Estoppels to be pleaded.

A Recital in a Condition of an Obligation is an Estoppel; which he that made the Obligation shall not, in an Action to be brought thereupon, be permitted to plead any thing to the contrary. *Pasch.* 24 *Car.* 1. *B. R.* For that were to contradict his own Act and Deed; and the Recital shall be intended to be true and not to be contradicted. *Dyer* 196.

Recital in a Condition of a Bond in an Estoppel.

The Defendant shall not be admitted to say, That a judicial Writ was sued out at any other Time than in Term. *Lutw.* 33.

None shall say, A judicial Writ was sued out at any other Time than in a Term.

A Jury are not estopped to find the Truth in a Special Verdict. *Lutw.* 510. 1644 *Moor*, Case 323. Tho' the Parties are, the Jury are not.

A Jury not estopped to find the Truth in a Special Verdict.

As well the Jurors as the Parties are concluded by the Confession of the Parties in the Record. 3 *Leon.* 272.

Confession of the Parties in the Record is binding.

Where an Indenture is said to be made between Baron and Feme of the one Part, &c. but never sealed by the Feme, where it shall be an Estoppel, and where not. See Title Indenture.

A Deed said to be made by Baron and Feme, but made only by the Baron, where it shall be an Estoppel.

All Parties and Privies in Estate and Interest are bound by Estoppels. 4 *Rep.* 53. a.

Parties and Privies bound by Estoppels.

A Mortgagee leases for Years by Indenture, and performed the Condition, and made a Feoffment in Fee; this shall bind the Feoffee; for all who claim under the Estoppel shall be bound by it. *March* 64. pl. 99.

All claiming under an Estoppel shall be bound by it.

The Condition of a Bond was to pay all such Legacies as J. S. had bequeathed by his Will. Here it was held, That the Defendant could not plead, J. S. made no Will; but he might plead, That J. S. gave no Legacies by his Will. *Moor* 555.

Condition to pay all Legacies in a Will.

Cannot plead, No Will:

But may plead no Legacies.

If a Man be obliged to perform the Covenants in an Indenture on his Part to be performed, it is no Plea for him to say that there were no Covenants on his Part to be performed. *Cro. Eliz.* 757.

Where a Man is bound to perform Covenants, no Plea to say there were no Covenants.

Although Estoppels conclude the Parties to say the Truth, yet the Jurors are not concluded thereby; because they are sworn *ad veritatem de & super premissis dicendam.* 4 *Rep.* 53.

Though the Parties are concluded by Estoppels, the Jurors are not.

A Man takes a Lease for Years of his own Land, this is no Conclusion but during the Term. 4 *Rep.* 54. a.

A Man takes a Lease of his own Land.

This is no Estoppel, and why.

For after the Term is expired the Indenture is but an Escrow or piece of Parchment. *Cro. El.* 36. *pl.* 1.

Where a Knight is bound by the Name of an Esquire.

If one enter into an Obligation by the Title of an Esquire, whereas in Truth he is a Knight: If an Action be brought against him upon this Obligation, and he is named an Esquire, he shall be estopped to plead in Abatement to the Writ or Bill, that he was not an Esquire, but a Knight, at the Time that he entred into the Obligation.

What Heir an Estoppel shall bind.

An Estoppel shall bind only the Heir who claims the Right of him to whom the Estoppel was. *8 Rep.* 53. *b.*

Recital of a Term where there is none, is no Estoppel.

A Demise by Indenture of a Term, *Habendum* from the Expiration of another Term therein recited, when really there was no such Term *in esse*:

This is no Estoppel to the Lessor or Lessee, but the Lessee may presently enter, and the Lessor may grant the Reversion. *Vaugh.* 82.

Several Cases of Estoppels.

Several Instances and Cases of Estoppels. See *Cro. El.* 362. *pl.* 24.

Estovers.

See Appendant and Appurtenant.

Estovers, what.

Estovers contains House-boot, Hedge-boot, and Plow-boot; and if he hath in his Grant these general Words of reasonable Estovers in Woods, &c. he may thereby claim those three Estovers. What Estovers Tenant for Life, and Tenant for Years can have. *Co. Litt.* 41. *b.*

Prescription to have Estovers for Repairs, and new Buildings also.

A Man seised in Fee of an House and Land prescribes to have Estovers for the repairing of his said House, and for the building of new upon the said Land; and held to be a good Prescription. *Cro. Jac.* 25. *pl.* 1.

Where Estovers and Services remain after an Alteration made.

In all Cases of Estovers, when the Alteration of the Quality, or Name of the Part of the House, doth not infer any Prejudice to the Tertenant, the Estovers and Services remain. *4 Rep.* 87. *b.* 88. *a.*

Where a Man hath Estovers by Grant or Prescription, Alteration of the Rooms shall not prejudice it.

Where a Man hath Estovers, either by Grant or Prescription, to his House; although he alters the Rooms and Chambers of the House, as to make a Parlour where the Hall was, and such like Alterations

tions of the Qualities, but not of the House it self, and not making of new Chimneys, whereby no Prejudice can come to the Owner of the Wood; this is not any Destruction of the Prescription. 4 Rep. 87. a. 88. 4 Leon. Case 383.

Where Men have Mills or Houses, to which Water-courses and Estovers are appendant or appurtenant, and they are blown down, or burnt by Lightning, or other Accident. If the Owner re-edify them in the same Place and Manner as before, they shall have the ancient Appendants and Appurtenances, as the other Mills or Houses had before. 4 Rep. 86.

Where Appurtenant do belong to new Houses or Mills built in the Places of the old.

Estray.

An Estray is any Beast that is not wild, found within any Lordship, and not owned by any Man: (Pecus quod elapsum a custode campos pererrat ignoto Domino) In which Case, if it be cry'd according to Law in the next Market-Towns, and not claimed by the Owner within a Year and a Day, it is the Lord's of the Soil.

Estray, what.

How to claim an Estray, and how to justify it, and what to be allowed for keeping, and how to obtain a Property in it. Cro. El. 716. pl. 42.

How to claim an Estray, and how to justify it, and get a Property in it.

An Estray is not to be used in any Manner except in case of Necessity, as to milk a milch Cow, or the like; but not to ride an Horse. Cro. Jac. 148. 1 Roll. 673.

How to use it.

The Plaintiff prescribes for Estrays as to his Manor appertaining; and that such a Day an Ox coming as an Estray into his Manor, the Defendant took and carried it away: Upon Not guilty, there was a Verdict for the Plaintiff. Cro. Jac. 513. pl. 25.

An Action brought for taking and carrying away an Estray.

Estrepement.

See Waste.

What this Writ is.

Estrepement is a Writ that lieth where one is impleaded by a *Præcipe quod reddat* for Land: There, if the Demandant supposes that the Tenant will commit Waste pending the Plea, he shall have this Writ, which is a Prohibition, commanding him that he commit no Waste pending the Plea. See 6 E. 1. cap. 13. Or he may sue out this Writ together with his Original. 2 Inst. 328.

Where a Writ of Estrepement lies.

A Writ of Estrepement lies also in an Action for Waste, as well before as after Judgment, and before Execution; because Damages cannot be recovered for more than is in the Count, nor can Waste be assigned after the Writ. 5 Rep. 115. b.

Count, Trial, Verdict, Judgment, Damages and Costs in Estrepement.

A Writ of Estrepement was delivered to the Tenant in a Formedon, who notwithstanding committed Waste, and thereupon the Demandant counted upon this Writ; the Tenant pleaded, *Non fecit vastum contra prohibitionem*, and it was found by Verdict that he did; whereupon the Demandant the Plaintiff had his Damages and Costs. Moor, Case 245.

What the Sheriff may do upon it.

The Sheriff may by this Writ resist those that will make Waste. And if he is put to it, he may imprison the Offenders, and make a Warrant to others to do it, and may (if Occasion) raise the *Posse Comitatus*. 5 Rep. 115. b. 2 Inst. 329.

To whom this Writ is to be directed.

This Writ may be directed, either to the Tenant and his Servants, or to the Sheriff; and if it be directed to the Tenant and his Servants, and they are duly served with it, and afterwards commit Waste, they are imprisonable for the Contempts; but not so when directed to the Sheriff, because he must raise the *Posse Comitatus*, Hob. 85.

It lies for Tenant in Dower.

Per Saunders. If a Feme brings a Writ of Dower to be endowed of certain Houses, and the Tenants commit Waste in the Houses, the Demandant shall have a Writ of Estrepement, otherwise she would lose her Dower of them. Dal. 2. pl. 6.

It lies in Waste.

In Waste the Plaintiff prayed a Writ of Estrepement against the Tenant and his Servants, and had it. Cro. Eliz. 393.

Estrepement.

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In a Writ of Entry *sur* Disseisin upon a Disseisin made to himself, the Demandant prayed a Writ of Estrepement, and had it. *Cro. Eliz.* 484. pl. 21.

It lies in a Writ of Entry *sur* Disseisin.

Note also, That the Chancery will upon filing of a Bill, and before Answer, grant an Injunction to stay Waste.

The Chancery will grant an Injunction to stay Waste.

Evidence.

Compulsion.

Copies.

Demurrers.

Depositions.

Oyer.

Recital and Disrecital.

See

Evidence, generally speaking, is used for some Proof, either by Testimony upon Oath, or else by Writing, or by Records.

Evidence, what.

In an Action upon the Statute of Hue and Cry, brought by one *Oliver* a Carrier, against the Hundred of *Wallington* in *Surrey*: *Oliver* who was robb'd was admitted by the Court to give Evidence to the Jury to prove he was robb'd, and the Place where, and to what Value.

Party robbed admitted to give Evidence.

In an Information of Perjury to prove the Perjury, one was produced to what one since dead swore upon the first Trial, and allowed good Evidence. *Raym.* 170.

Witness to prove what one since dead had sworn upon the first Trial, allowed good Evidence.

Upon an Information upon the Statute of Usury, he who borrows the Money may be a Witness after he hath paid the Money, but not before. *Id.* 191.

Upon an Information of Usury the Borrower may be Witness after the Money paid.

The Allegation of the Counsel at the Bar is no Evidence to the Jury, but the Matter only which is proved upon Oath upon this Allegation, is good Evidence. *Mich.* 22 *Car. B. R.* For Evidence to a Jury ought to be given upon the Oaths of Witnesses, or upon Matters of Record, or by Deeds proved, and other like authentical Matter; but the Allegation of the Counsel is sometimes but as they are instructed, and what

Allegation of Counsel, no Evidence.

etc

else they apprehend is fit to be spoken for the best Advantage of their Client's Cause, and not according to the Truth of the Fact.

On Trial of a *Modus*, or in case of Copyhold, none concerned can be a Witness.

Depositions in *perpetuam rei memoriam*, no Evidence at a Trial at Law.

less there be an Answer put in and produced. *Raym.* 335, 336.

Depositions before the Coroner are Evidence if the Witnesses be dead.

Admittance of one as Administrator in an inferior Diocese, is a Bar against the Person that admits him to give Evidence that the Intestate had not *bona notabilia*.

be to suffer the Party to disprove by others what he hath already himself granted.

Aff of the Spiritual Court is sufficient to prove an Administration.

Evidence admitted against the Seal of the Ordinary.

What may be given in Evidence against the Probate of a Will.

Tho' Evidence be conclusive, Jury may hazard an Attaint.

Jury may not carry Writings out of Court to consider of them as Evidence, unless they have been proved in Court.

are of no Credit, and are no Part of the Evidence which they are to consider upon.

How Evidence given to a Jury may be answered by Counsel.

dit on the other Side. *Mich.* 22 *Car. B. R.* Which is upon the Matter a Denial of the Evidence given on the other Side to be true by proving the contrary.

Upon the Trial of a *Modus*, or in case of Copyholds, where several Persons hold by one and the same Title, so that the Trial of one determines the other; no Person concerned shall be an Evidence, because they swear in effect to discharge themselves. *Hob.* 91.

Depositions taken in Chancery in *perpetuam rei memoriam* on a Bill for that purpose exhibited, cannot be given in Evidence at the Trial at Law, un-

less there be an Answer put in and produced. *Raym.* 335, 336.

Depositions before the Coroners admitted for Evidence, the Witnesses being dead. 1 *Lev.* 180.

The Admittance of one to be an Administrator in an inferior Diocese, is a Bar against the Person that doth so admit him to give Evidence at a Trial, that the Intestate had not *bona notabilia* in divers Dioceses at the Time of his Death. *Mich.* 22 *Car. B. R.* For such Evidence would be contrary to what he had formerly admitted, and so it would

be to suffer the Party to disprove by others what he hath already himself granted.

An Aff of the Spiritual Court sufficient Evidence to prove the Grant of Administration. 1 *Lev.* 25.

Evidence admitted against the Seal of the Ordinary. 1 *Lev.* 235.

Nothing can be given in Evidence against the Probate of a Will, but Forgery of it, or its being obtained by Surprize. *Raym.* 405.

Though the Evidence is conclusive, yet the Jury may hazard an Attaint if they please. *Ibid.*

The Court will not permit the Jury upon a Trial at the Bar to carry any Writings with them out of the Court, as Evidence for them to consider of, but such as are under Seal, and have been proved in Court. *Mich.* 22 *Car. B. R.* For others

are of no Credit, and are no Part of the Evidence which they are to consider upon.

An Evidence given to a Jury, may be answered by the Counsel, either by confessing and avoiding it, or else by encountering the Evidence given, with giving stronger Evidence, and of greater Credit on the other Side. *Mich.* 22 *Car. B. R.* Which is upon the Matter a Denial of the Evidence given on the other Side to be true by proving the contrary.

An Issue in Trespass was, Whether or no *Dominus concessit secundum consuetudinem Manerii*? And the Evidence was, That the Lord had lately granted, but never before that Time; the Jury here must find *non concessit*; for although in truth *concessit*, yet *non concessit secundum consuetudinem Manerii*, which was the Point in Issue. 1 Leon. Rep. 55, 56.

Where the Jury must find *non concessit*, though the Evidence be *concessit*.

A Thing which is concluded in the Ecclesiastical Court which doth concern Lands, is not to be given in Evidence to a Jury at a Trial concerning those Lands. Mich. 22 Car. B. R. For the Courts of Common Law are not to be guided by their Proceedings, nor are they to be urged to a Jury in Evidence to sway their Consciences; neither have they any thing to do with Land.

Conclusion in the Ecclesiastical Court concerning Lands, may not be given in Evidence to a Jury.

A Person that may be admitted as a Witness, at a Trial, may give Words in Evidence to the Jury, which were spoken to him by another Person, who by the Rules of the Court might not be admitted as a Witness at the Trial. Mich. 22 Car. B. R. For it is but matter of Evidence, and is left to the Jury how far they will give Credit to them; and it is lawful for one that is admitted as a Witness to give any thing in Evidence which may concern the Matter in Question.

A Witness admitted at a Trial may give Words in Evidence spoken by a Person who might not be admitted as a Witness.

If a Man be convicted of Felony, and after pardoned, it seems he may be a good Witness. By three Justices. Raym. 369.

Pardon'd after Conviction of Felony, a good Witness.

A Man convicted of Felony, and burnt in the Hand, may be a good Witness, for that the burning in the Hand is *quasi* a Statute-Pardon. *Idem* 330.

So likewise, if burnt in the Hand.

But in the said Case it is said, That if he had not been burnt in the Hand, a Pardon would not have restored him to his Credit again; for that in his Testimony the People are concerned, and consequently the Pardon cannot deprive them of their

But if he had not been burnt, a Pardon would not have restored him to his Credit.

Interest. *Ibid.*

It is not of absolute Necessity that a Deed given in Evidence to a Jury, be shewed in Court; but if it be proved that there was such a Deed as is given in Evidence, it is sufficient, upon some Proof to be made that the Deed is lost. Trin. 23 Car. B. R. For a Deed maybe imbezzilled or lost, and so not to be produced; but in such a Case a Record cannot be given in Evidence without the very Record it self in Court, or a Copy to be sworn a true Copy taken from the Record.

A Deed given in Evidence need not be shewed in Court; but it must be proved there was such a Deed, and that it is lost.

Wheresoever the same Evidence will maintain either an Action of Trover or Trespass, there the Recovery and Judgment in one of the said Actions may be pleaded in Bar against the other. Raym. 472.

When the same Evidence will maintain either Trover or Trespass, a Recovery in one of the Actions may be pleaded in Bar to the other.

Whatever must be presumed to have been given in Evidence at a Trial, the want of mentioning it in the Record will not vitiate after Verdict.

On a Demurrer to Evidence the Judges cannot try a Matter of Fact.

dant must agree upon it, and confess it. *Trin. 23 Car. B. R.* For else the Court will not proceed to deliver their Opinions touching the Matter in Law demurred upon, because if the Matter of Fact be not agreed, there can be no Judgment given in the Cause, which way soever the Matter in Law fall out to be.

There can be no Demurrer to Evidence for a Thing in the Juror's own Knowledge.

Matter in Law not to be given in Evidence, except in case of a special Verdict.

putable, is to be reserved to be spoken to in Arrest of Judgment, or to be found specially. *Trin. 23 Car. B. R.* For the Jury are only to try Matters of Fact. *Vaugh. 143.*

If Feme Covert confesses a thing for her Husband's present Advantage, but to the future Prejudice of herself, it is no good Evidence to a Jury.

Wife may not be Witness against her Husband.

Diffension between Man and Wife. *Sir James Croft's Case, Co. Litt. Fol. 6. b.*

Husband and Wife not Witnesses against each other, except in Cases of Treason.

If the Wife be served with a *Subpœna*, and do not appear, Action lies against the Husband.

Recital of a former Patent no Evidence of it.

Also wheresoever it may be presumed that any thing must of Necessity have been given in Evidence at the Trial, the want of mentioning it in the Record, as the Attornment to the Grant of a Reversion, shall not vitiate after a Verdict in Arrest of Judgment. *Raym. 487.*

The Judges of the Court cannot try a Matter of Fact in Question, upon a Demurrer to an Evidence; and therefore the Plaintiff and the Defendant

Demurrer upon Evidence cannot be for a thing that the Jury may know of their own Conscience. *1 Lev. 87.*

Matter in Law ought not to be given in Evidence at a Trial, unless in case of a special Verdict, but only Matter of Fact is to be given in Evidence, and the Matter in Law, if there be any that is disputable,

If a Feme Covert acknowledge a thing at a Trial, which is for the present Advantage of her Husband, but is for her own future Disadvantage, yet this is no good Evidence to a Jury. *Mich. 23 Car. B. R.* For her Husband's present Advantages are hers also, and is more looked upon than her future Disadvantage.

A Feme Covert cannot be a Witness against her Husband, *Quia sunt animæ duæ in una carne*; for it would be, if admitted, an occasion of perpetual Diffension between Man and Wife. *Sir James Croft's Case, Co. Litt. Fol. 6. b.*

The Wife cannot be admitted to give Evidence against her Husband, nor the Husband against the Wife, in any Case except it be for Treason. *Raym. 1.*

If a Feme Covert be served with a *Subpœna*, if she doth not appear, an Action will lie upon the Statute against the Husband, but she ought to be personally served, and Charges tendered to her. *1 Leon.*

Recital in a Patent of a former Patent is not Evidence that there was a former Patent, without proving it by producing it. *2 Lev. 108.*

Infancy given in Evidence upon a *Non Assump-*
fit. 12 *Lev.* 144.

Infancy given in Evi-
dence on *Non Assumpfit.*

The Defendant's Counsel ought to conclude by way of Answer to the Evidence that was given to the Jury by the Plaintiff's Counsel. *Mich.* 24 *Car.* B. R. For if the Plaintiff's Counsel doth begin the Evidence, it is reason the Defendant should speak in answer to that Evidence, because he is upon the defensive Part, and is to give an Answer to all that is said against him in matter of Evidence; but the Plaintiff's Counsel after this, is to sum up his Evidence to the Jury, which is no more than to put them in mind how he hath proved his Cause.

Defendant's Counsel ought to conclude by answering the Evidence given on behalf of the Plaintiff.

An ancient Writing that is proved to have been found amongst Deeds and Evidences of Land may be given in Evidence to a Jury, although the executing of it cannot be proved. *Mich.* 24 *Car.* B. R.

An ancient Deed may be given in Evidence, though the Execution of it cannot be proved.

For it is very hard to prove things that are very ancient, and the finding it in such a Place is a Presumption, that it was preserved as a Thing of Value, and to be made use of, and is left to the Jury what Credit they will give to it according to Circumstances.

A Writing that is permitted to be read, to prove one Part of an Evidence given to a Jury, may be read to prove any other Part of the whole Evidence to be given. *Mich.* 24 *Car.* B. R. For it is but to make the whole Truth of the Cause appear.

A Writing read to prove one Part of the Evidence, may be read to prove any other Part of it.

If the Plaintiff or Defendant will give some Part of an Answer in Chancery in Evidence to a Jury, the Court may order that the whole Answer be read. *Mich.* 24 *Car.* B. R. That the Court and the Jury may the better consider what it makes to the Evidence; and it may be, if Part only be read, it may prove good Evidence for the Party, whereas the whole Answer taken together may be against him, and so by reading of Part the Truth may be discovered.

If some Part of an Answer in Chancery be given in Evidence, the Court may order the whole to be read.

Part of a Copy of a Record cannot be given in Evidence, but it must be the entire Copy of the whole, so that the Court may adjudge upon the whole Record when it is before them.

The whole Record, not only Part of it, must be given in Evidence.

A Transcript of a Record which is in another Court, or an Inrollment of a Deed may be given in Evidence to a Jury. *Mich.* 1649. B. S. For they are Things to be credited, being made by Officers of Trust, who shall not be presumed to do false Things, and being upon Record, if false, may be disproved by the other Party.

A Transcript of a Record, or an Inrollment of a Deed, may be given in Evidence.

Upon a Trial at the Bar the Counsel of that Party who doth begin to maintain the Issue that is to be tried, whether it be the Counsel of the Plaintiff, or the Counsel of the Defendant, ought to conclude the Evidence. *Pasch.* 1650. 1 *May.* B. S. That is, only sum

The Counsel who begin to maintain the Issue, ought to conclude the Evidence.

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up his Evidence given ; but if he give new Evidence, the other Party hath Liberty to answer it, or encounter it with other Evidence.

If a Juror give his Testimony, he must be examined openly in Court, and not give Evidence in private to his Fellow Jurors.

If any one of the Jury that is sworn to try the Issue, be desired to give his Testimony concerning some Matter of Fact that lies in his particular Knowledge, and concerns the Matter in Question as Evidence to his Fellow-Jurors, the Court will have him examined openly in Court upon his Oath touching his Knowledge therein, and he is not to deliver his Testimony in private unto his Fellow-Jurors. 31 O^r. 1650. Mich. B. S. For the Court and Counsel on both Parts are to hear the Evidence given on either Side as well as the Jury, that it may be answered by the other Party if need require, and that the Court may direct the Jury to find according to the Evidence.

The Jury may personally know that what is deposed in Court is false.

Copy of an Inscription on a Grave-stone allowed as Evidence.

Likewise an Almanack.

Also an Office found of one who died seised of Lands held *in capite*, though in another County.

Either Party may make an Affidavit in their own Cause, but it shall not be admitted in Evidence at the Trial.

The Jury may view Depositions in Chancery, and have them from the Bar to consider of them as Evidence, if they are exemplified under the Great Seal, otherwise not.

The Jury may have Evidence from their own personal Knowledge, by which they may be assured that what is deposed in Court is absolutely false. *Per Vaugh.* in *Bushel's Case*, 147.

Memorandum. At a Trial at the Bar between *Baxter and Foster*, concerning the Title of Land, a Copy of an Inscription upon a Grave-stone in *London* was admitted in Evidence to prove a Pedigree. Mich. 1656. B. S.

An Almanack wherein the Father had writ the Nativity of his Son, allowed as good Evidence to prove the Nonage of the Son. *Raym.* 84.

In the Case of *Miller Plaintiff*, and *Collumbine Defendant*, upon a Trial at the Bar in an Action of Trespass and Ejectment, it was said by *Rolle Chief Justice*, That an Office which is found after the Death of one that died seised of *Capite* Lands in a County wherein the Lands found in that Office do not lie, but in another County, may notwithstanding it was not found in the County where the Lands do lie, be given in Evidence to a Jury that is to try the Title of those Lands, if there were a special Livery granted unto the Heirs of those Lands. 1654. B. S. For this presumes that there was a special Direction for finding this Office in this extraordinary Way.

The Plaintiff or the Defendant may make an Affidavit in their own Cause depending here, and it may be filed ; but it may not be admitted in Evidence in the Trial of the Cause betwixt them. Mich. 1656.

The Jury may view Depositions in Chancery, if they be exemplified under the Great Seal, and they may also have them with them from the Bar to consider thereof as Part of the Evidence ; but if they be not exemplified under the Great Seal, they may only look upon them at the Bar, but not have them with them out of the Court, without the

the Leave of the Court, 1655. B. S. For they are not so authenticall if they be not exemplified under Seal; for the Seal gives them the Testimony of the Court of Chancery it self that they are true; but without Exemplification, they pass only upon the Credit of the Examiner, who is but an Officer in Court.

If one do produce a Lease made upon an Outlawry, in Evidence to a Jury to prove a Title, he must also produce the Outlawry it self; for the Outlawry is the Ground of the Lease, and by consequence of the Title which is to be proved; but if he produce the Lease to prove other Matter, he needs not to shew the Outlawry, but may have the Lease only read in Evidence; but in both Cases he must prove the Lease: And so it is of an Extent, for at the Trial the Plaintiff must prove by an Exemplification or examined Copy the Statute or Judgment on which the Extent is grounded. So held in a Trial at the Bar between *Johnson* and *Spencer*. *Pasch. 1655. B. S.*

A Lease made upon an Outlawry is no Evidence to prove a Title unless the Outlawry it self be produced.

In an Action of Debt for Rent upon a Lease-Parol, and *Nil debet* pleaded, the Plaintiff must, if it be insisted upon, shew his Title to the Land; but upon a Lease for Years under Hand and Seal, he need not, because the Defendant hath estopped himself by accepting a Lease, and sealing of a Counter-part.

In Debt for Rent on a Lease Parol, and *Nil d. bet* pleaded, the Plaintiff must shew his Title; otherwise in a Lease under Hand and Seal.

If a Parson brings an Action of Debt for Tithes upon the Statute, upon *Nil debet* pleaded, he must, if the Defendant puts him to it, prove his Institution and Induction, and reading of the Thirty-nine Articles, otherwise he will be nonsuited; for that is his Title to the Tithes.

In an Action of Debt for Tithes, and *Nil d. bet* pleaded, the Parson must prove his Institution, &c.

He that affirms the Matter in Issue, ought first to make Proof to the Jury. *Litt. Rep. 36.*

Who shall make the first Proof to the Jury.

In Debt a Release may be given in Evidence upon *Nil debet*. 5 *Mod. 18.*

A Release may be given in Evidence upon *Nil debet*.

In Debt for Rent, Entry and Expulsion may be given in Evidence upon *Nil debet*. *Ibid.*

So may Entry and Expulsion.

One shall not give in Evidence an Account of the Substance of a Letter, without the shewing of it, or informing of the Court how it came to be lost. *Trin. 9 W. B. R. at Guildhall.*

One shall not be bound to give an Account of the Substance of a Letter, without shewing or making out how lost.

A Person who was condemned to be hanged for Burglary, but having a Pardon for Transportation, was allowed to be a good Witness. *Ibid.*

Where a Person condemned shall be allowed to be a Witness.

Where a Person confessed that he was convicted, but said also that he had a Pardon: This made him a good Evidence, for you must take all his Confession together; so the Pardon superseded the Conviction. *Ibid.*

A convicted Person pardon'd is a good Evidence.

When Depositions in Chancery may be Evidence.

Depositions taken in Chancery of Persons who are dead, may, by Order of the Court of Chancery, be read as Evidence to a Jury, upon a Trial at the Bar, by the Plaintiff or Defendant, or both, if the Depositions were taken in the Cause, which is to be tried at the Bar, and between the same Parties that are Plaintiff and Defendant in the Trial: But the Copy of the Bill and Answer must be first proved. Whether they may be read, if there be no Answer, see *Show. Rep. 363. Raym. 336.* They cannot unless there be an Answer put in and produced; yet there need be but a Line or two read: For they are not to be read as Evidence, but as a Means to read the Depositions.

What Proof of an Affidavit will do, and what not, upon an Indictment of Perjury.

Upon an Information of Perjury in an Affidavit, a Copy of the Affidavit produced, and proved to be made use of by him upon a Motion in the Cause, was held to be good Evidence: But a Copy of an Affidavit only produced against a Man, without Proof that he made it, or was concerned in the Cause, will not do. *Show. Rep. 397.*

How the Defendant shall give the Plaintiff's Answer in Evidence.

Where the Defendant gives the Plaintiff's Answer in Chancery in Evidence, he may insist to read only such Part of it as he will; for it is like Examination of Witnesses; but then the other Side may insist to have the whole read. *5 Mod. 10.*

Where pleading of *Plene Administravit* admits the Debt, and where not.

In Debt *Plene Administravit* admits the Debt; but otherwise it is in an *Assumpsit*, for there the Plaintiff must prove the Debt; and in Proof of a *Plene Administravit*, if it be Debt on Bond, and you offer to prove Payment of a Bond before your Action brought, you must prove it to be a Debt, and that the Bond was sealed and delivered. *Show. Rep. 81.*

What is good Evidence to prove an Executor.

The Probate of a Will was adjudged to be good Evidence, to prove that the Testator made an Executor. *9 W. B. R.*

What Writings a Jury may carry with them.

The Court will not permit the Jury upon a Trial at Bar, to carry any Writings with them out of the Court, as Evidence for them to consider of, but such as are under Seal, and have been proved in Court: For others are of no Credit, and are no Part of the Evidence, which they are to consider upon.

What Writings or Books may be delivered to a Jury.

Writings or Books which are not under Seal, cannot be delivered to the Jurors without the Assent of both Parties; but being delivered by the Court without their Assent, neither of them can avoid the Verdict in regard they were given in Evidence before. *Cro. El. 411. pl. 1.*

The Court may do it without Assent.

Where Evidence shall be given of tampering.

The tampering with Witnesses by an Agent, or doing any other criminal Act, shall be given in Evidence against the Party whose Agent so acted.

Who shall be counted an Agent.

A bare Witness is not an Agent; but he that manages by the Authority of another is an Agent.

Evidence.

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One shall not ask a Witness a Question, the affirmative Answer to which, may draw him into a Crime.

A Witness shall not make himself criminal.

Depositions taken in *Dutch*, and translated into *English* by a publick Notary in *Holland*, and signed afterwards by the Commissioners and Parties examined: The Translation was not allowed to be read, because it doth not appear that they were truly translated.

Where Depositions in Foreign Language shall be admitted.

Depositions taken of one out of the Realm; the Person who makes the Depositions shall be taken to be there still, and shall be read: But if it can be made appear that he is in *England*, then his Depositions cannot be read, but he must come in Person.

Where Depositions are taken of one beyond Sea.

A Certificate under the Seal of the Town of *Utrecht*, to prove the Residence of one there, unless there be Oath made of the Truth thereof, and one sworn for the Exposition thereof into *English*, is not allowable. *Cro. Jac. 365. pl. 1.*

How a Certificate from beyond Sea must be made a good Evidence.

In an Action of Disceit, the *Sciens* need not to be proved at the Trial; because it shall be presumed, that the Party knew whether the Wares were good or no. See Title *Actions*, and Title *Disceit*.

The *Sciens* need not to be proved in an Action of Disceit.

The Copies of publick Books, as Corporation-Books, &c. shall be allowed to be Evidence, as well as Proceedings in Spiritual Courts, Admiralty-Courts, or Courts-Baron, which are not Courts of Record: So likewise the Copy of the Probate of a Will for Goods only, but not for Lands. For the Spiritual Court hath no Conuzance of Lands: For as to Lands, it is but a Copy of a Copy, which cannot be given in Evidence. *Mich. 3 W. B. R. See 1 Lev. 25.*

Where publick Books, as Corporation-Books, &c. may be given in Evidence.

Also Proceedings in the Spiritual Court.

The Evidence which a dead Person gave in a former Trial, was offered, but denied; because they had not a Copy of the Record of the Trial where the Evidence was given.

Where the Evidence of a dead Person may be allowed, and where not.

Upon a Trial at Bar in an Ejectment, a Mortgage-Deed inroll'd seven Years after the Date, (the Original being lost) was allowed for Evidence, upon slight Proof, that there was such a Deed. *4 W. & M. B. R.*

Where a Deed inroll'd seven Years after the Date, was given in Evidence.

A Counterpart of a Deed was allowed to be given in Evidence. *3 Anne, B. R.*

A Counterpart of a Deed allowed to be given in Evidence.

Fraud, or no Fraud, within the Statute of *27 Eliz. cap. 4.* may be given in Evidence upon the general Issue. *Gooche's Case. 5 Rep. 60. a. b.*

Fraud, or no Fraud, may be given in Evidence on the general Issue upon the Statute of *27 Eliz. c. 4.*

A Declaration sets forth a Writ, *De placito transgressionis*; and the Writ given in Evidence is *Trespas*, *Ac etiam Bille*, this is naught. *2 Lev. 85.*

The Writ ought to be pleaded as it is, without a Variance.

Where

Where a Deed inrolled may be given in Evidence, tho' the Estate passeth not.

Where a Recital is Evidence, where not.

Where a Citizen may be a Witness for the City, and where not.

When married, not admitted to be given in Evidence.

to prove that she was not married to *A. B.* but the Court would not admit it. 9 *W. B. R.*

In an Issue upon usurious Agreement, the Witness called to prove it, declaring he was the Plaintiff's Attorney, and employed to draw the Agreement; the Court would not allow him to be examined.

between the Plaintiff, who was High-Sheriff of *K.* and his Under-Sheriff; and therefore prayed, That he might not be put to discover his Client's Secrets wherein he was intrusted: Whereupon the Court declared, That he ought not to be obliged to answer that Question: And thereupon, for want of Evidence, the Jury found a Verdict against

Per Curiam. It would be an Hindrance to all Commerce and Conversation.

How to prove a Deed, when all the Witnesses but one are dead.

dead Mens Hands, until you have taken out a *Subpœna* against the living Man, and made strict Enquiry after him, and have Affidavit of this Matter, and also that he cannot be found; but if you can prove them all dead, then you need only to prove their Hands: Therefore it is not adviseable to have too many Witnesses to a Deed.

What shall be good Evidence to prove the Grant of a Term from an Assignee, when the Original is thought to be destroyed.

Where an old Term was granted by a Bishop to Queen *Elizabeth*, and by her assigned over; and by her Assignee assigned over (as is supposed) to *J. S.* who, and several Generations after him, have had and continued in Possession; but the House of one of the Family being burnt in the Year 1643. where it is also supposed the original Assignment was burnt, and twelve Years afterwards a Grant of the Residue of the Term, mentioned to be a Term of above seventy Years, was held to be a good circumstantial

Evidence

Where a Deed inrolled doth not pass the Estate, it shall be Evidence to some Purposes. 3 *Lev.* 387.

A Recital of a Deed is no Evidence without procuring of the Deed it self, or an Inrollment of it. 2 *Lev.* 189.

A Citizen may be a Witness for the City, where the Concern is the City's, and not any particular Person's; but where they shall not be Evidence, see 2 *Lev.* 231, 236.

Where the Point in Issue was, Whether *A. B.* was married to *C. D.* before he had married *E. F.* or no? *C. D.* was offered to be produced a Witness,

An Issue was joined upon a corrupt Agreement, and a Witness was called to prove this Agreement; and being sworn and ask'd by the Defendant's Counsel, what Money he knew to be paid upon that Agreement? He appealed to the Court, and declared, That he was and had been for many Years the Plaintiff's Attorney, and that he was employed by the Plaintiff to draw the Agreement between the Plaintiff, who was High-Sheriff of *K.* and his Under-Sheriff; and therefore prayed, That he might not be put to discover his Client's Secrets wherein he was intrusted: Whereupon the Court declared, That he ought not to be obliged to answer that Question: And thereupon, for want of Evidence, the Jury found a Verdict against the Plaintiff. The Court declared, If this should be admitted, it would be a manifest Hindrance to all Society, Commerce and Conversation *Mich.* 5 *W. & M.*

Where there are several Witnesses to a Deed, and they are all dead but one, who cannot be found; you shall not be admitted to prove the

Evidence to prove the Grant of the Term from the Assignee of Queen Elizabeth. Mich. 11 W. B. R.

Camden's History of England was offered to be given in Evidence upon a Trial at the Bar: But the Court would not admit of it. Staynor & Harris. 7 W. & M. B. R.

Camden's History not allowed for Evidence.

Neither shall an Entry in the Herald's Office be allowed good Evidence to prove a Pedigree for an Heir: Because they are not Matters of Record, but allowed only as circumstantial Evidence.

Nor an Entry in the Herald's Office.

But Heralds Books were admitted to be good Evidence to Triers of a Challenge, to prove Cofinage in the Sheriff. 2 Plow. 426. a. Vernon & Mannors.

Heralds Books admitted to be good Evidence to Triers of a Challenge.

In an Action for a False Return upon a Mandamus the Court will not make a Rule for the Town-Clerk to produce the Books to the Plaintiff, unless he will give a Note in Writing of the Use he intends to make of them. 8 W. B. R.

Where the Court will order a Town-Clerk to produce his Books, and where not.

Where the Probate of a Will is produced in Evidence, the Defendant cannot say that it was a forged Will, or that the Testator was *Non compos mentis*: But Evidence may be given, that the Seal was forged, or that there were not *bona notabilia*. 1 Lev. 236.

What may be said against a Probate of a Will, and what not.

The Book of the Ecclesiastical Court, wherein are entred the Acts or Orders of Court for granting of Administrations, was produced at a Trial to prove the granting of an Administration, and allowed to be good Evidence. 1 Lev. 25.

What is good Evidence to prove the granting of Administration.

A Counterpart of an ancient Lease, without Witnesses, produced by a Grandson, and found amongst other Writings of his Grandfather's, was allowed to be good Evidence. 1 Lev. 25.

A Counterpart of an ancient Lease found amongst old Writings, allowed to be good.

A Sister is examined a Witness in Chancery for her Brother, concerning his Inheritance. The Brother dies, and the Estate descends to her, with other Sisters, as Coheirs to the Brother. Afterwards there comes to be a Trial at the Common Pleas-Bar for this Estate: In which Cause the Sister, who was the examined Witness in Chancery, was one of the Plaintiffs: And the Question was, Whether her Deposition should be read for the Plaintiffs? And upon Mr. Justice Tracy's going to the King's Bench, and conferring with the Justices there, and making of his Report upon his Return to the Common Pleas, it was adjudged, That the Depositions should not be read. Hill. 2 Anne, C. B.

A Sister examined in Chancery for her Brother's Inheritance, who dies, and she is one of his Coheirs; her Depositions shall not be read in a Trial at Law.

An Estate is in Dispute. A Man gives his Bond to his Tenants to indemnifie them for Payment of their Rent to him: Afterwards, upon a Suit in Chancery, the Rent is ordered to be paid to a Receiver, and to lie in his Hands until the Court should further order. The Person bound pays the Money which he received of the Tenants into the

Where the Money due for Rent is ordered to be paid to a Receiver; whether one interested in the Estate and bound to indemnifie the Tenants, can be a Witness of their Payment of Rent to the Receiver.

Receiver's Hands; but the other Side having gotten his Bond, he could not get it up. And whether he should be admitted to be a Witness or no, notwithstanding his Bond lay out against him, was the Question. And it was adjudged, That he should; and he was sworn accordingly.

Evidence admitted to bastardize a Son after the Death of his Father and Mother.

One that had Judgment of the Pillory may be a good Witness, unless convicted for an infamous Cause.

What is good Evidence upon Not guilty in Trespas.

Evidence admitted to bastardize a Son after the Death of the Father and Mother; and also against a Patent and Act of Parliament, which called him Son and Heir. 3 Lev. 410.

Although Judgment of the Pillory infers Infamy at the Common Law; yet by the Canon and Civil Law it doth not import any Infamy, unless the Cause for which he was convicted was infamous: and unless he was convicted for an infamous Cause, he shall be a good Witness to prove a Will.

The Defendant may not, upon Not guilty in Trespas, give in Evidence, that the Freehold was in such a Person, and that he by his Commandment enter'd: For if he by whose Command the Defendant entered has Right, at the same Instant that the Defendant entered, the Right is in his Master; and then he is not guilty as to the Plaintiff.

Examination.

See Evidence.
Witness.

Method of examining a Feme Covert who levies a Fine.

IN the Court of Common Pleas, when a Feme Covert levies a Fine, the Judge or Commissioners, who take the same, do always examine her, whether she do it willingly or no, before they take the Fine, which they will not take without her free Consent; but where a Feme Covert suffers a Recovery, she is not examined; but *Roll* Chief Justice said, That he doth always examine a Feme Covert that comes before him to suffer a Recovery. 8 Nov. 1650. B. R. For the Mischief may be as great by the not examining of her in the one Case as in the other; and therefore it seems but reasonable that equal Care should be had in both Cases to prevent it.

Custos Brevium to examine the Issue with the Plaintiff's Attorney before the Trial.

By *Glyn* Chief Justice. The *Custos Brevium* ought to examine the Issue to be tried with the Plaintiff's Attorney before the Trial. 1655. B. S. That the Trial may not miscarry by reason of some Slip in the

the making up the Issue; but the usual Course is for the Attorney to examine it, and to put his Hand thereunto.

A Witness that is to be at a Trial to testify his Knowledge there, ought not to be examined before the Trial before a Judge, or before any Court, in any Matters concerning the Trial, except the Plaintiff and the Defendant agree thereunto: Or by Rule of Court else that he be examined upon Interrogatories at a Judge's Chamber, in the Presence of the Attorneys on both Sides, in case such Witnesses be going beyond the Seas, or cannot be present at the Trial. *Hill. 1649. B. S.* For this would be to prepare him for his Testimony against the Trial, which ought not to be; for it is a sort of tampering with the Witness, which the Law allows not.

A Witness ought not to be examined before Trial.

A Copy of a Will examined in the Prerogative-Office, where Lands are therein devised, cannot be given in Evidence at a Trial, but it ought to be the original Will it self, if it be in the Office; but where the original Will cannot be found, there the Register's Book may be admitted. *Pasch. 1651. B. S.* For the Will may be mis-enter'd there, and so alter'd thereby, that it cannot be said to speak the Mind of the Testator.

How a Will for Lands may be proved.

Exception.

A Exception is a Thing taken out of the Deed, and is as if no Mention had been made of it in the Deed. See Carter 99.

Exception, what,

The Counsel at the Bar ought to take all their Exceptions to the Record at one Time; or at least before the Court have delivered any Opinion in the Cause. *Pasch. 23 Car. 1. B. R.* For the Court is not bound to hear any afterwards; for that it would hinder dispatch of Business.

Exceptions to the Record must be taken all at one time.

A negative Expression may be taken to enure to the same Intent as an Exception doth. *Trin. 23 Car. 1. B. R.* For an Exception in its Nature is but a Denial of a Matter taken to be good by the other Party, either in Point of Law or Pleading.

A negative Expression may be taken to the same intent as an Exception.

Exceptio in non exceptis firmat regulam.

Where a Pardon is with an Exception, the Party who pleads it ought to shew, that he is not any of the Parties excepted. 1 *Lev. 26.*

How to plead a Pardon with an Exception.

Exception.

Trees excepted, and afterwards become Parcel.

If a Man makes a Feoffment of a Manor, excepting the Trees; and afterwards the Feoffee buys the Trees; they are now become Parcel of the Freehold: But if an Acre or an House had been excepted, that could never have been Parcel again.

Feoffment of a Manor, except *Black Acre*: *Habendum*, except before excepted.

Feoffment of a Manor, except *Black Acre*, to himself for Life only: *Habendum*, except before excepted, to the Use of *A.* in Tail: *Black Acre* shall not pass to *A.* in Tail. 1 *Lev.* 287.

Of what an Exception is.

An Exception is always of a Thing granted, and a Thing *in esse*. *Co. Litt.* 47. *Dyer* 59. a. 11.

What are void Exceptions.

An Exception that crosses the Grant, or is repugnant to it, is void. *Hob.* 72. 170.

An Exception of a Thing granted, is void.

An Exception of that which is expressly granted, is void. *Cro. Eliz.* 244. pl. 1.

It is an Agreement that the thing excepted shall not pass.

An Exception is the Agreement of the Lessee, that the Thing excepted shall not pass by the Demise. *Cro. El.* 557. pl. 1.

Exception and Saving, the Difference.

An Exception excepts clearly, but a Saving doth not. *Carter* 99.

Other than.

Other than, will make an Exception, as in the Statute of *Fines*, 4 *H.* 7. *Ibid.*

An Exception must be of a Thing severable from the Grant.

An Exception must be of a Thing which is severable from, and not inseparably incident to, the Grant. *Dyer* 59. a.

What the Thing excepted must be.

The Thing excepted must be a particular, not a general Thing; and not of a particular Thing out of a particular Thing, or of a Part of a Certainty.

Moor, Case 1236. *Dyer* 103.

An Exception that goes to the whole, is void.

Where an Exception goeth to the whole Thing granted or demised, the Exception is void. *Cro. Eliz.* 6. pl. 2.

Exception out of an Exception, how it is.

An Exception out of an Exception, or a Saving out of a Saving, makes the Thing as if it never had been excepted. *Cro. El.* 372. pl. 19.

Lessee for Life may in his Lease to his Lessee except the Wood and Trees, &c.

Lessee for Life makes a Lease for Years, excepting the Wood, Underwood and Trees; this is a good Exception, although he hath not any Interest in them but as Lessee, because he is chargeable in Waste; but if Lessee for Years assigns over with such an Exception, it is a void Exception. *Cro. Jac.* 296. pl. 2. See 5 *Rep.* 12. b. 3 *Cro.* 18.

Lessee for Years cannot.

A Lease for Years is made of a Park, excepting the Woods and Underwoods, and Herns make Nests in Trees; the Herns belong to the Lessor and not to the Lessee. 14 *H.* 8. *Fol.* 1, 2.

By the Exception of Woods, Herns which breed in the Trees, are excepted.

If Woods, whereof a *Præcipe* lies by the Name of *So many Acres of Wood*, are Parcel of a Manor, and a Lease is made of the Manor, excepting the Woods: By this the Soil is excepted. 5 *Rep.* 11. *Poph.* 146. But

Where by the Exception of all Woods, the Soil is excepted.

Exception.

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But if I except all my Trees growing in my Manor, there the Soil it self is not excepted. 11 Rep. 49.

Not by the Exception of all Trees.

These five Things following are observable in the Exceptions before-mentioned of Trees.

The five Things observable in Exceptions.

1st. They remain Parcel of the Inheritance, although they are excepted. 11 Rep. 48, 50. 5 Rep. 11.

2dly, That the Soil it self is not excepted; but sufficient Nutriment for the Trees.

3dly, That the Lessee shall have the Pasture growing under the Trees.

4thly, The Lessor shall have all the Benefit of the Trees. 11 Rep. 50. a.

5thly, He shall have the Fruit and Mast of the Trees. 11 Rep. 50.

No Man can except that to himself, which belongs to another by Law. 5 Rep. 12. b.

Cannot except what belongs to another.

Excommengement.

See { Abatement.
 { Trial.

Excommengement is where a Man is excommunicated in the Spiritual Court, and then he is disabled to sue any Action at Law until he be absolved; and the Bishop must certifie the Excommunication into Chancery; whereupon goes a Writ De Excommunicato Capiendo returnable in the King's Bench.

What Excommengement is.

If in a Writ De Excommunicato Capiendo, the Party excommunicated hath not a sufficient Addition, according to 1 H. 5. cap. 5. he shall not incur the Penalties of the Act of 5 Eliz. cap. 23.

The Party excommunicated must have his true Addition.

1 H. 5. cap. 5.

5 Eliz. cap. 23.

Execution.

See	Audita Querela.	Judgment.
	Baron and Feme.	Partners.
	Ca. Sa.	Prison and Prisoner.
	Elegit.	Scire Facias.
	Fieri Facias.	

An Execution executed, what it is.

Execution is where Judgment is recorded in any Action, real or personal, as the Case is; and when any Writ is awarded to give Seisin, or for the levying of his Debts or Damages, this is called a Writ of Execution; and when he hath Seisin of the Lands, or is paid his Debt or Damages, or hath the Body of the Defendant awarded to Prison, then this is an Execution executed.

If the Record of a Judgment in C. B. be removed into B. R. the Party cannot take out Execution without a *Sci. Fa.*

By Glyn Chief Justice, *Trin.* 1660. If the Record of a Judgment given in the Common Pleas be removed into this Court, the Party cannot take out Execution upon the Judgment without a *Scire Facias quare Executionem habere non debeat*. For the Party against whom the Judgment was had, may have Matter to shew why Execution should not be had.

Where a Writ may be out of Chancery to execute a Judgment in an inferior Court.

One may have a Writ *de executione Judicii* out of the Chancery to execute a Judgment in an inferior Court where it was given, although a Writ of Error be brought to remove the Record, and reverse the Judgment, if he that brings the Writ of Error do not take care to have the Record transcribed, and the Writ of Error returned up in due Time. *Mich.* 22 *Car. B. R.* Because in such case the Court will hinder the Writ of Error, which was brought only for Delay.

Judgment must be revived by *Sci. Fa.* if Execution be not taken out within a Year and a Day.

If Execution be not taken out within a Year and a Day, after Judgment is given in a Cause, where there is no Fault in the Defendant; as for Instance, where there is no Injunction or Writ of Error, &c. to prevent it, there must be a *Sci. Fa.* taken out to revive the Judgment; and Execution cannot be taken out before such a *Sci. Fa.* is taken forth, and Judgment thereupon obtained. *Mich.* 22 *Car. B. R.* And this *Sci. Fa.* may within that time be taken out of

course

Execution:

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course without moving the Court; but if Execution be not taken out in ten Years after or longer, then a *Sci. Fa.* cannot be taken out to revive such a Judgment without moving the Court, or at the side Bar; but upon Motion the Court will grant it.

If one committed to the *Marshalsea* for divers Misdemeanors, is taken in Execution, he shall not be set at large. *Raym.* 58.

A Man committed for Misdemeanors, and taken in Execution, shall not be discharged.

Also where a Man is in Prison for criminal Matters, he is not chargeable with a civil Action without Leave of the Court. *Ibid.*

A Man imprison'd for criminal Matters; not chargeable with an Action without Leave of Court.

But if he happen to be charged, he shall not be discharged: *Fieri non debuit, sed factum valet.* *Ibid.*

But if he be charged, he shall not be discharged.

The Court cannot divide an Execution which is entire. *Mich.* 24 *Car. B. R.* For this would be to divide the Judgment upon which it is grounded; for the Execution is grounded on the Judgment.

An entire Execution cannot be divided.

If the Record (upon a Writ of Error returnable in the Exchequer-Chamber) is brought to reverse a Judgment in this Court, and be not upon Rules given certified in due time; so likewise upon a Writ of Error returnable into this Court out of the Court of Common Pleas, then the Clerk of the Errors will *nolle prosequi* the Writs, and he that hath the Judgment, may take out Execution of course. *Mich.* 1649. *B. S.* For it shall be intended that the Writ of Error is meerly brought for Delay, because the Party doth not prosecute it, and it shall be all one as if it had not been brought; for to prosecute faintly, and not to effect, is counted in Law no Prosecution.

If the Record upon a Writ of Error be not certified in due time, he that hath the Judgment may take out Execution.

After a Judgment is signed, there may be Execution taken immediately upon it; and it is not necessary that the Plaintiff should forbear to take out his Execution until the Judgment be entred.

It may be taken out after Judgment signed, and before it be entred.

Mich. 1649. For it is a perfect Judgment of the Court before it is entred, for the Entry of it is the Act of the Clerk, and not of the Court; and it may be he may be dilatory in entring of it, to the Prejudice of the Plaintiff.

If Judgment be affirmed upon a Writ of Error in the Exchequer-Chamber, no Execution shall go against the Bail in the original Action for the Costs taxed *occasione dilationis executionis.* *Per Magistrum Livesay & alios, &c. Pasch.* 21 *Car.* 2.

If Judgment be affirmed in the Exchequer-Chamber, there shall be no Execution against the Bail for Costs taxed for the Delay.

If one have a Judgment given for him, and he doth afterwards bring an Action of Debt upon this Judgment, but doth not give any Declaration unto the Defendant; the Plaintiff may at any time within the space of one Year next after the Judgment given for him, take out Execution upon his Judgment. 1652. *B. S.* For the bringing of an Action of Debt doth not take away his Judgment; and his not prosecuting of his Action of Debt, doth presume he will

Judgment and Debt brought upon it, but no Declaration delivered, Execution may nevertheless be taken out within a Year.

will waive that Action, and resort to his Execution upon the Judgment; but if he give a Declaration, it is otherwise, for then he shews that he intends to proceed upon his Action of Debt; and both ways he may not proceed.

What Executions by the Common Law, and what by the Statute.

What Executions were at the Common Law, and what by the Statute. 3 Rep. 11, 12, 13, &c.

No Execution to be upon Goods upon leased Land till the Lessor is paid one Year's Rent. 8 Annæ.

Where there is an Execution or Extent against the Goods of Tenant for Life, Tenant for Years, at Will, or otherwise, the Plaintiff in the Action shall before the Removal of the Goods by such Execution or Extent, pay to the Landlord or his Bailiff

so much Rent as shall be due to him for the Rent of the Land, &c. provided the Arrears do not amount unto above a Year's Rent; but if it be more, then the Plaintiff paying the Landlord or his Bailiff one Year's Rent, may proceed to execute his Execution, and the Sheriff is to levy and pay to the Plaintiff as well the Money paid for Rent as the Execution-Money. See in Title Rents the Clause at large.

Executions well executed, tho' not returned.

Executions are well executed, though they are not returned. 4 Rep. 67. a. See postea.

What Executions are well executed without being returned, and what not.

It was said that there is a Difference between a *Liberate* and a *Ca. Sa.* and a *Fi. Fa.* for the *Ca. Sa.* and *Fi. Fa.* are conditional, *ita quod habeas corpus*, &c. and *ita quod habeas denarios*, &c. but there is

no such Clause in a *Liberate*; and therefore if it be not returned, the Execution done by Vertue thereof, is well enough. 1 Leon. Case 378. Fol. 280.

Where Execution may be sued out although a Writ of Error be allowed.

An Execution may issue forth out of this Court, notwithstanding a Writ of Error brought, returnable in the Exchequer-Chamber, to reverse the Judgment given here, if Bail (where Bail is requir'd) be not put in, or a *Superfedeas* be not obtained, or if the Transcript of the Record be not certified and return'd.

This Court makes Execution where any Judgment is reversed or affirmed.

If a Judgment given in another Court be affirmed or reversed for Error in the King's Bench, the Party shall have Execution in the King's Bench; because the Proceedings in the Court below are enter'd upon Record in the King's Bench: Nay, if it

be a Judgment in Debt or Covenant in the Common Pleas, affirmed

in the King's Bench upon a Writ of Error, the Plaintiff may outlaw the Defendant in the King's Bench upon this Judgment affirmed, in the same Manner as he could have done in the Common Pleas, whilst the Judgment remained there. And if he be taken upon an *Ex post Ca.* he shall be in Execution presently upon the Arrest, altho' his Body was never brought up, and committed in Execution. 5 Rep. 88. b.

Where there may be an Outlawry after Judgment in the King's Bench.

When taken upon an *Ex post Ca.* shall be in Execution.

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All Judgments must be executed in their peculiar Jurisdictions, and cannot be removed from thence to be executed by the superior Courts. *Cro. Car.* 34. pl. 7.

All Judgments must be executed in their peculiar Jurisdictions.

The Court will not deliver one out of Prison upon an Affidavit, that lies there in Execution; but the Party must have a Writ of *Superfedeas* to supersede the Execution, if the Court think fit to grant it: Because he lies in Prison by the King's Writ, and must be delivered by an Act of as high a Nature, *viz.* another Writ.

A Prisoner in Execution cannot be delivered out upon a Rule of Court, but it must be by the King's Writ.

A Man is in Execution, and the Gaoler suffers him to escape; he is not discharged of the Execution, but may be retaken: But if the Plaintiff permits him to escape, he cannot take him again. *Lutw.* 1266.

The Difference between the Prison-Keeper's discharging of a Prisoner, and the Plaintiff's discharging him.

A Prisoner in Execution escapes, he may be retaken in Execution; for the Defendant shall never take Advantage of his own Wrong by his Escape. *Cro. Car.* 255. pl. 6.

A Prisoner in Execution who escapes may be taken in Execution again, and why.

A new Trial was ordered upon Payment of Costs, and Judgment was ordered to stand for Security: And afterwards, the Sitting after Term the Cause was tried again, and a Verdict obtained for the same Damages as the first Verdict was: Afterwards, in the Vacation, the Attorney for the Plaintiff sues out an Execution upon the first Verdict and Judgment, and levied the Money; but the Court upon Motion set it aside: Because the Plaintiff ought not to sue out his Execution, but upon the last Verdict; and Judgment could not be signed thereupon till the following Term after the Verdict.

A new Trial upon Payment of Costs, and Judgment to stand for Security.

Upon which Verdict Execution to be sued out, and when.

If a Writ of Error be brought in the Exchequer-Chamber to reverse a Judgment given in this Court, and the Judgment is affirmed there; yet that Court cannot make out Execution upon the Judgment affirmed: But the Record must be transmitted back to this Court, and enter'd in the Office, and then Execution to be thereupon sued out; for Execution must be done in this Court where the Judgment was given.

The Exchequer cannot make out Execution, but this Court.

If an Execution be returned, executed and filed, the Party can never have another Execution upon that Judgment upon which the Execution was grounded: For there can be but one Execution executed with Satisfaction upon one Judgment; for the returning and filing of it makes it to be an Execution executed: But before it was returned and filed, it was but an Execution executory, or *in Fieri*; and there cannot be intended to have been any Satisfaction made to the Plaintiff by Vertue thereof: But if it be not returned and filed, he may have another Execution. By Vertue of the Statute of 21 Jac. cap. 24. Where a Man dies in Execution, the Plaintiff may have an *Elegit* against his Lands.

21 Jac. cap. 24.

Where the Entry of *unica tantum fiat executio* shall be.

Where two Obligors in a Bond are sued by several *Præcipes*, the Entry is, *Quod unica tantum fiat executio*; that is, with Satisfaction: For the Plaintiff may have both their Bodies in Execution. 5 Rep. 86. b. 87.

Where Part is levied upon Goods upon an *Elegit*, there may be another *pro Residuo*.

Where Part is levied upon Goods upon an *Elegit*, another *Elegit* may be sued out *pro Residuo*: Because the Statute that gives the *Elegit*, intended to give a Remedy for the Debt, until it was levied; and the levying of Goods only for Parcel upon an *Elegit*, is no Impediment; but he shall have another *Elegit*, and take the Lands for the Residue: But when an *Elegit* is sued out, and the Lands taken, and the Writ is returned and filed, he shall not have any farther Execution.

Where the Plaintiff shall not have a second *Elegit*.

How a Term shall be taken in Execution upon an *Elegit* or *Fi. Fa.* and sold.

A Term for Years was found upon an *Elegit*, and the Commencement of the Term was mistaken, and the Sheriff sold it, and the Sale adjudged void; and the Court said, That there is a Difference between a Sale upon a *Fi. Fa.* and upon an *Elegit*; for the *Elegit* is, *Quod per Sacramentum, &c.* they apprise the Goods, and extend his Lands; therefore without an Inquisition he cannot sell; so that if the Inquisition finds one thing, and he sells another, the Sale is void; because if it had been found that he was possessed of such Lands for a Term of Years yet to come, which they apprized at so much, it had been good: So also upon a Sale upon a *Fi. Fa.* *Cro. El.* 584. pl. 13.

Two bound in a Bond, and several Judgments against them; an *Elegit* is sued out and executed against one, and a *Ca. Sa.* against the other; but it lies not.

Two were bound jointly and severally; they are sued severally, and several Judgments against them; an *Elegit* is sued out against one, and executed and returned, and a *Ca. Sa.* against the other, who brings his *Audita Querela*; and it well lies. *Cro. Jac.* 338.

How far Goods are bound by the Delivery of the Writ to the Sheriff.

How far Goods are bound by Delivery of the Writ to the Sheriff, by the Statute of *Frauds and Perjuries*. 29 Car. 2. cap. 3. See 3 Lev. 69, 70.

29 Car. 2. cap. 3.

Husband and Wife in Execution for the Debt of the Wife, she shall be discharged, and why.

Husband and Wife taken in Execution for the Debt of the Wife, the Wife shall be discharged, the Husband being in Execution: For the Husband being in Execution, the Wife shall not be so also. Note, Because the Wife hath nothing to satisfy the Execution with. 1 Lev. 51.

Where Executions are well executed.

delivered and sold,

The Execution of a *Liberate* is good, without being returned. 4 Rep. 67. a. And so in all Cases where no Inquest is to be taken, but only Lands or Seisin had, which are only Matters of Fact. *Ibid.*

When the Conuzor may enter; and when have a *Sci. Fa.*

The Conuzor of a Statute cannot enter when the Statute is satisfied, but is put to his *Sci. Fa.* But in case of an *Elegit* the Party may enter, because it is certain how much is to be levied: But in the

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the other it is not ; because Damages, Costs and Expences, which are uncertain, are to be levied. 4 Rep. 67. b.

A *Ca. Sa.* may be executed upon a Prisoner for Suspicion of Felony at the King's Suit, and altho' he be arraigned and convicted, and discharged of the Felony, yet the Sheriff may keep him; and if he lets him go, it is an Escape.

A Prisoner upon Suspicion of Felony may be charged in Execution.

Lands are bound from the Day of the Judgment. *Cro. Car.* 149.

Lands are bound from the Day of the Judgment.

Executor.

See	{	Assets.	{	Devastavit.
		Baron and Feme.		Infant.
		Ca. Sa.		Judgment.
		Debet & Detinet.		Plene Administravit.

Executor is where a Man makes his Will, and therein names the Person who shall execute it: Then he who is so named is his Executor, and shall have an Action against every Debtor of his Testator; and if he hath Assets, he shall be liable to pay the Testator's Debts to the Value of them.

What an Executor is.

If one be indebted to J. S. in a certain Sum of Money, and J. S. makes his Will, and deviseth this Debt due unto him, unto A. B. and makes J. L. his Executor and dies; this Debt devised unto A. B. must be paid unto J. L. the Executor, and not to A. B. the Devisee. *Mich. 22 Car. B. R.* For the Executor, and not the Devisee, is the Person who can give a sufficient Discharge for this Debt; and the Debt is Part of the Testator's Estate, for which the Executor only is responsible, and it may happen that the Testator did not leave sufficient to pay his Debts; now if the Executor should permit the Devisee to receive this Money to his own Use when there is not sufficient to pay the Testator's Debts, this would be a *Devastavit* in him, and he will be bound to answer so much out of his own Estate; but the Law hath taken that prudent Care in this Case, that a Legacy shall not vest in the Devisee without the Assent of the Executor thereunto; but if an Executor hath Assets sufficient to pay

J. S. devises by Will a Debt due to him from a third Person to A. B. makes J. L. his Executor and dies; the Debt shall go to the Executor, and not to the Devisee.

pay Debts and Legacies, there if he shall refuse to assent to the Legacies, or to make Payment thereof, the Chancery will compel him.

What an Executor must plead, if a *Sci. Fa.* be brought against him to shew Cause why he should not pay a Debt recovered by the Plaintiff against the Testator.

fully administred, and yet be liable in Law to pay the Debt demanded upon the *Sci. Fa. viz.* When Goods of the Testator's shall afterwards come to his Hands.

Judgment against Executors upon *riens en leur mains* pleaded, to be executed when Assets shall happen.

An Executor of his own Wrong cannot wave a Term of which the deces'd died possessed.

Executor *de son tort* cannot plead a Retainer.

How far an Executor *de son Tort* is chargeable.

If it be found that Executors sold they shall be charged *de bonis propriis*.

Executor is a collective Word.

the first Testator's Goods, and is as it were his Executor for such Goods as remain unadministred by the first Executor.

An Executor may recover a Duty due to the Testator though he be not named in the Creation of it.

If a *Sci. Fa.* be brought against an Executor to shew Cause why he should not pay a Debt unto the Plaintiff recovered against the Testator; the Executor cannot plead fully administred, but he must plead, That no Goods of the Testator are come to his Hands, whereby he might discharge the Debt. *Mich. 22 Car. B. R.* For he may have

Judgment given presently against Executors upon *riens en leur mains* pleaded, to be executed when Assets shall happen. 2 *Saund.* 226.

An Executor which hath administred Goods of the Testator's as Executor, or that is Executor of his own Wrong, by disposing of the Goods of the Party deces'd, without Authority given unto him, cannot wave a Term for Years of Land, &c. of which the deces'd died possessed. *Mich. 23 Car. B. R.* For he hath charged himself to be answerable to all Persons concerned as far as the deces'd Party's personal Estate will amount unto; but if the Term will not be Assets, he may wave the Term. *Trin. 24 Car. B. R.* For it is to no purpose to accept it.

An Executor *de son Tort* cannot plead a Retainer in Satisfaction of his own Debt. *Mich. 13 Car.*

An Executor of his own Wrong is not by Law chargeable for more than the Value of the Goods of the deces'd doth amount unto, and which did come unto his Hands, and with which he had intermeddled. *Mich. 23 Car. B. R.* Because he is not impowered by Law to recover any more of the Estate, as an Executor authorized by the Probate of a Will is.

If it be found that the Executors *vendiderunt*, &c. they shall be charged *de bonis propriis*, although there is no *Devastavit*. 2 *Saund.* 403.

The Word *Executor* is a Word collective, and doth comprehend in it the Executor of an Executor. *Hill. 23 Car. B. R.* For he is accountable for

An Executor may recover a Duty which was due to the Testator, although the Executor was not named in the Creation of that Duty. *Trin. 22 Car. B. R.* For he represents the very Person of the Testator, and the Testator's Estate belongs to him.

An Executor may be charged upon a collateral Promise made unto the Party by the Testator, if the Promise was broken in the Life-time of the Testator, else not. *Mich. 1649. B. S. and 16 April, 1650. B. S.* For by the Breach of the Promise there accrued a Duty to him to whom the Promise was made from the Testator, but before it is broken it is no Duty.

May be charged upon a collateral Promise made by the Testator, if broken in his Life-time, otherwise not.

Two Persons are bound jointly, one of them dies; the Survivor only shall be charged, and not the Executor of the Deceas'd, because the personal Lien survives. *Pasch. 16 Car. 2.*

Two jointly bound, one dies; the Survivor shall be charged, and not the Executor of the deceas'd.

If after Appearance one of the Plaintiff's Executors make Default, the other Plaintiff shall give him a Rule to come in and join with him, or be severed; but if he did never appear, then there must go out Summons and Severance against him.

One of the Executors makes Default after Appearance, the other shall give him a Rule to join.

An Executor shall be bound by his Testator's Covenant, although he is not named therein; but an Heir shall not be bound unless he be particularly named. *Dyer 14, 905.*

An Executor, tho' not named, is bound by his Testator's Covenant; otherwise of an Heir.

Debt for Rent lies in the *Detinet* only against an Executor as well for Rent due in the Testator's Life-time, as by the Executor after his Death. *Cro. Car. 225.* contrary to the Opinion of *Hargrave's Case* in *Coke*, which the Court said was reversed for that Reason.

Debt for Rent lies in the *Detinet* only against an Executor.

Where one pretending to be Executor, which is controverted in the Spiritual Court by another Executor, who sets up another Will, an Injunction was granted to the Debtors to the Testator's Estate, not to pay any Money till the Title to the Executorship was settled in the Spiritual Court. *Chanc. Rep. 75.*

Where two Wills are set up, and are controverted in the Spiritual Court, an Injunction was granted *quousque*.

A Man attainted of Felony cannot make Executors; for he hath forfeited all that he had, and hath nothing to dispose of. See 1 *Leon. 326.* But a Person outlawed may. *Cro. El. 577. pl. 2.*

A Person attainted of Felony cannot make Executors, and why; but a Person outlawed may.

Where many Executors are made, and some refuse, and others prove the Will, those which have refused may afterwards administer, notwithstanding their Refusal before the Ordinary. But if they do all refuse before the Ordinary, and he commits Administration to another, they cannot afterwards administer, because the Executor dies intestate. *9 Rep. 36. b. 37. a. Moor, Case 426.*

Some Executors refuse, and others prove the Will; the Refusers may administer; but if all refuse, they cannot.

A. makes his Will, and makes three Executors, who renounce the Executorship under their Hands, and pray the Ordinary to grant Administration to a Kinsman of the Testator, which is done; afterwards one of the Executors grants away a Term of the Testator's, and upon an Ejectment brought upon it, it was adjudged, that the Renunciation had disabled him to do it. 1 *Leon. 135. Case 185.* See *Cro. El. 92. pl. 21.*

An Executor cannot meddle after all have renounced.

How an Executor's Refusal must be.

Letters *ad colligendum*.

The Refusers must be named in Actions brought, and may release.

If only one proves the Will, all may sue.

A surviving Executor, and the Executor of the deceased Executor, it is naught.

1 Leon. Case 304. But it is otherwise in Equity; for the Testator's Goods, in whosesoever Hands they are, are liable in Equity to pay Legacies. *Chanc. Rep. 57.*

Infant, and another Executor, how to sue.

How to appear.

Sale of Goods by an Infant-Executor under the Value shall bind him.

An Infant of four Years is Executor, and *J. S.* to have the Disposition of his Goods during the Infancy, *J. S.* is Executor during that Time. *Cro. Eliz. 164. pl. 10.*

Where one Executor is under Age, the other may prove it solely.

Where Lands are devised for the Payment of Debts.

In what manner they shall be paid. *Chanc. Rep. 32.* See Title Devise.

One Devisee may sell where the others refuse.

21 H. 8. cap. 4.

Where Lands are devised to be sold, is an Interest.

Executors cannot refuse for a Time, but for ever; but they may pray Time to advise upon it, which must be granted; and then the Ordinary is to grant Letters *ad colligendum*, not Administration. *Cro. Eliz. 92. pl. 21.*

The Executors who prove the Will ought in every Action to be brought as Executors, to name those who refuse, and they may release. *9 Rep. 37. a.*

The King's Courts have always allowed the Probate of any one of the Executors to enable them all to bring Actions. *9 Rep. 38. a.*

Two Executors, one dies; and Debt was brought against the Survivor and Executor of the deceased Executor, and the Writ abated; because it ought to be brought only against the surviving Executor.

Where there is an Infant, and another Executor of full Age, they may sue by Attorney; but if sued, the Infant must appear by Guardian. *1 Lev. 290, 300.*

An Infant-Executor sells the Goods of his Testator at an under Rate; he shall not bring Trover for the Goods, but the Sale shall bind him. *3 Leon. Case 192.*

Two Executors, one under Age; he of full Age may prove the Will solely, and it is good; because the other cannot prove it during his Nonage. *1 Lev. 181.*

Lands are devised for Payment of Debts; Goods in the Hands of an Executor shall not be liable. *Ibid. 203.* But otherwise in case of an Administrator.

In what manner they shall be paid. *Chanc. Rep. 32.* See Title Devise.

Where a Man devises Lands to his Executors for the Payment of his Debts, and some of them will not meddle in the Matter: In that Case, he or they of the Executors that will sell, may sell, tho' the others refuse to join in it. *21 H. 8. cap. 4. Co. Litt. 113. a.* See Title Authority.

If a Man devises Lands to his Executors to sell, and dies, the Executors have here an Interest, and may sell Part at one Time, and Part at another. *Co. Litt. 13. a.* See *Cro. Car. 382. pl. 10.*

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Where a Man devises Lands to his Executors to be sold, and makes two Executors, and one dies, the Survivor may sell; for as the Estate so the Trust shall survive; and there is a Diversity between a naked Trust, and a Trust coupled with an Interest. *Co. Litt. 113. a.* But if the Devise had been that his Executors shall sell, and one dies, the other cannot sell; for it being but a bare Authority, and not an Interest, cannot survive. *Co. Litt. 112. b. 113. a.*

A Devise to two Executors, and one dies, the Survivor may sell.

Difference between a naked Trust and a Trust coupled with an Interest.

Note the Difference between these two Cases; in the first it is to his Executors to sell, or to be sold, which is an Interest; and in the other, that they shall sell, which is but a bare Authority only.

What is an Interest, and what an Authority.

Although where Executors have no Interest but a bare Authority, yet their Sale amounts to an Alienation to vest the Land in the Grantee, and he shall be in by the Devisor. *Co. Litt. 113. a.*

The Grantee shall be in by the Devisor.

Note, My Lord Coke in his *1 Inst. Fol. 113. a.* gives this Advice to such as make such Devises by Will, viz. to make it as certain as they can. As that the Sale be made by his Executors, or the Survivors or Survivor of them, or by such or so many of them as take upon them the Probate of his will: And it is better to give them an Authority than an Estate, unless his Meaning be, that they shall take the Profits of the Land in the mean time; and then it is necessary that he deviseth that the mean Profits till the Sale shall be Assers in their Hands; for otherwise they shall not be so. *Co. Litt. 113. a. See Cro. Car. 382. pl. 10. See Title Authority.*

Where a Man wills that his Lands shall be sold, and that the Money coming thereof shall be disposed of for the Payment of his Debts, the Executors shall sell the Land, for to them it belongs to pay Debts. *2 Leon. Case 276.*

A Devise of Lands to be sold for Payment of Debts, and says not by whom, the Executors shall then sell.

Where Lands are devised to Executors, though they refuse to be Executors, yet this shall not hinder them to take by the Devise as to the Inheritance. *Poph. 8.*

Tho' Executors refuse to be Executors, yet they may take Lands devised to them.

A Man devises Lands to his Executors for the Payment of his Debts. The Payment of the Money to the Vendors, being Devisees and Executors, is a sufficient Discharge to the Vendee, altho' the Vendors do not lay out the Money upon Payment of the Debts; for they only are answerable to the Devisor's Creditors.

Vendees of Land devised for Payment of Debts, not bound to see the Debts paid.

Where an Executor is sued, if he plead that there is another Executor not named, he ought to say that he hath administred. *1 Lev. 161.* But where an Executor sues, the Defendant may plead so, without shewing that the other had administred, for he cannot tell whether he hath administred or no. *1 Lev. 161. See 9 Rep. 37. b. Per Kelynge, 1 Keb. 865. pl. 10.* Where Executors sue, all must be named; but an Action against them may be brought against such only who administer.

How an Executor must plead, another Executor not named.

Otherwise where an Executor sues.

An

An Executor cannot wave a Term after Acceptance of the Executorship.

How to be charged for the Rent.

or not. 1 *Lev.* 127, 128. See Title *Debet & Detinet*.

Debt lies against Executors of a Lessee after Assignment.

Privity continues.

Where the Privity of Contract is altered by Assignment, and the Privity of Estate also, no Action lies for Rent.

Executors shall be bound by a Decree in Equity.

Debet & Detinet for other Part lies not against Executors.

propriis for the *Debet & Detinet*, and *De bonis Testatoris* for the *Detinet*. 3 *Lev.* 74.

Arrears of Rent upon a Lease-Parol payable by Executors, as Bonds.

Account lies against Executors of any Guardian or Receiver. 4 & 5 *Annæ*.

Where there are two Executors, and one proves the Will, the Action must be brought in both their Names.

Two Executors, one an Infant, the other proves the Will, and hath Administration to enable him to sue.

A *Sci. Fa.* upon a Judgment in Ejectment, lies against an Executor of the Defendant.

Debt upon a Bond, conditioned to leave his Wife 40 *l.*

The Wife made Executrix.

An Executor cannot wave a Term after he hath accepted of the Executorship. But he shall be charged with Rent in the *Detinet* if he hath Assets; and if he continues the Possession, he shall be charged in the *Debet & Detinet*, in respect of the Perception of the Profits, whether he hath Assets

or not. 1 *Lev.* 127, 128. See Title *Debet & Detinet*. Debt for Rent lies against the Executors of a Lessee after Assignment; because the Privity of Contract continues between the Lessor and the Executors of the Lessee. 1 *Lev.* 127.

In Debt for Rent; Adjudged, That where the Privity of Contract is altered by the Assignment of the Executor before any Rent due; and also the Privity of Estate by the Assignment of the Assignee of the Executor; Nothing remains whereupon to maintain the Action. 3 *Lev.* 295.

A Decree in Equity shall bind Executors *in equali gradu* with a Judgment at the Common Law. 3 *Lev.* 335.

An Executor is not suable in the *Debet & Detinet* for Part, and in the *Detinet* for other Part. Because they require several Judgments, *viz.* *De bonis propriis* for the *Debet & Detinet*, and *De bonis Testatoris* for the *Detinet*. 3 *Lev.* 74.

Arrears for Rent due upon a Lease-Parol is payable by an Executor before Bonds; because it favours of the Realty. 3 *Lev.* 267. 2 *Mod.* 44.

An Action of Account lies against the Executors or Administrators of any Guardian, Bailiff or Receiver. *Per* 4 & 5 *Annæ*. See Title Account.

Two Executors of full Age, one proves the Will, the Action must be brought in both their Names. 2 *Lev.* 240.

Two Executors, one within Age, the other proves the Will, and hath Administration *durante minori etate* of the Infant. This is granted only to enable him to sue solely, the other being incapable at present by reason of his Infancy. *Ibid.*

A *Sci. Fa.* upon a Judgment in Ejectment well lies against the Executor of the Defendant in the Judgment, and the Stranger who enters. 3 *Lev.* 100.

Debt upon a Bond, conditioned to leave his Wife 40 *l.* The Defendant pleads, That the Obligor made his Will, and made his Wife Executrix, and left Goods to the Value of 100 *l.* and naught; because he might have Debts upon Judgments, Statutes, &c. 3 *Lev.* 218.

An Executor sells the Goods, but doth not receive the Money they were sold for; or compounds with a Converter of the Goods, and takes a Bond for them, but never received any of the Money. Yet adjudged a *Devastavit* in him, *int' Norden & Levett. in B. R.* because it was the same thing as if he had received so much Money.

What shall be a *Devastavit* in an Executor.

An Executor pays Legacies, and seven Years after a Covenant is broken, for which an Action is brought; the Court inclined that it was a *Devastavit*, and that he ought to have taken Security for his Indemnity upon his paying of the Legacies. *Aleyn 38, 39, &c.*

An Executor pays Legacies, afterwards a Covenant is broken; he ought to have taken Security for his Indemnity.

An Executor sues a Bond of 100 *l.* this Matter is put to Arbitration, the Arbitrators do award that the Executor shall release upon Payment of 70 *l.* which he did; yet it shall be taken in Law that he had Assets to the Value of 100 *l.* And although he was compell'd by the Award to make the Release, yet it was his own Act to submit to the Arbitration, and it shall be a *Devastavit* in him for 30 *l.*

Executor puts a Bond to Arbitration, and less than the Debt is awarded, this is a *Devastavit*.

But where an Executor hath a Bond in his Hands, this is no Assets in his Hands, until the Money be recovered, because it is but a Chose in Action; but if the Executor releases the Debt, though without any Consideration, he hath made this Assets in his Hands. *Dal. 89. pl. 4. 3 Leon. Case 77.*

A Bond is no Assets, till the Money received. Till then it is but a Chose in Action. A Release of a Debt without Consideration is a *Devastavit*.

Where an Executor dies before Probate of the Will, the Ecclesiastical Court will grant Administration *cum Testamento annexo*, and not Administration *de bonis non*, though the Executor had administered some Part.

How Administration to be granted, where an Executor dies before Probate.

Executors of Executors shall have Actions of Debt, Account, and of Goods of the first Testator's carried away, and shall have Execution of Statutes and Recognizances as the first Testator, if living, should have had. And also they shall answer to others of as much as they have recovered of the first Testator's Goods, as the first Executor should do if he were living.

Executors of Executors shall have the Benefit and Charge of the Goods of the first Testator. 25 *E. 3. cap. 5.*

Formerly, if an Executor had wasted Goods, and left an Executor, and died leaving Assets, his Executor should not be chargeable, because it is a personal Tort. 2 *Lev. 110.* But this is now alter'd by a Statute made 4 & 5 *W. & M. cap. 24. sect. 12.*

Executor of an Executor shall not be charged with a *Devastavit*. 4 & 5 *W. & M. cap. 24. Sect. 12.*

If a *Sci. Fa.* be brought against an Executor, to shew Cause why he should not pay a Debt unto the Plaintiff recovered against the Testator; the Executor cannot plead Fully administered generally, but he must plead it specially; which see in Title *Plene Administravit*. Also a Judgment cannot be answered by pleading another Judgment. *Cro. Eliz. 575. pl. 21.*

How an Executor must plead to a *Sci. Fa.* upon a Judgment of his Testator's.

What an Executor must do, when sued by several Creditors.

An Executor was sued by several Creditors, and he pleads *Plene Administravit* to all at the same time, and that he hath not Assets, *præter* to pay one or two; and now he moved for Relief. *Curia*. We cannot give it, for he hath made himself liable to all the Debts: But he should have pleaded specially to one Creditor, shewing what Assets he had; or else to have paid him, and pleaded Fully administered.

How Executors shall plead Judgments.

In what Cases, and how Judgments shall be pleaded by Executors, and the Pleas and Replications good. 8 *Rep.* 132, 133. How to plead Bonds, Statutes, Recognizances and Judgments: And how to be replied to. 9 *Rep.* 109. *a.* See *Show. Rep.* 290.

A Statute and Judgment pleaded to an Executor.

The Plaintiff replies, That it was for Performance of Covenants.

How it is, where for Performance of Covenants, and where for Payment of Money.

How a Statute must be pleaded.

A Recognizance for Performance of Covenants not broken.

to say that it was for Performance of Covenants, and that none were broken. 2 *Leon.* 265. *Cro. Jac.* 102. *pl.* 34.

Payment of Debts upon Bond before Statute broken, is good.

No Priority in Debts upon Record, but only in the King's Case.

Plene Administravit ante notitiam, no Plea to a *Sci. Fi.* upon a Judgment.

for they at their Peril ought to take Notice of Debts upon Record and satisfy them; and though the Recovery were in another County than that where the Testator lived, it is not material. *Cro. El.* 793.

Where it is a good Plea in an Action upon a Bond.

Debt against an Executor who pleads a Statute, and Judgment not satisfied. The Plaintiff replies, and says, That there was a Defeazance to the Statute, and that it was not forfeited, and that the Defendant had sufficient to satisfy all: And upon a Demurrer adjudged, That if it had been a Statute only for the Performance of Covenants, which perhaps may never be broken, it shall be no Plea. But where it is for Payment of Money at a certain Day, and is allowable before Debts upon Bond, it is a good Plea. *Cro. Car.* 362. *pl.* 4. 363.

Note, Exception was taken to the pleading of the Statute, it not being said, *Per scriptum suum obligatorium*, nor, *secundum formam Statuti*, &c. and held to be naught. *Cro. Car.* 363, 209.

The Executor pleads, That the Testator was bound in a Recognizance of so much Money, and that he had not Assets *ultra*. It is a good Replication

If an Executor pay Debts upon Bond before a Statute broken, and afterwards the Statute is broken, Payment of the Debt upon the Bond is a good Plea against the Statute. *Cro. Jac.* 9.

There is not any Priority in Debt upon Record, unless only in the Case of the King, which is to be first paid. *Cro. El.* 575. *pl.* 20.

Sci. Fa. against Executors upon a Judgment of the Testator; they plead Fully administered, by paying Debts upon Bonds *ante notitiam*: It is no Plea;

But where an Action is brought against Executors in another County than where they live, and they not knowing thereof, pay Debts upon Specialties, it is good. *Ibid.*

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An Executor pleaded two Judgments against the Testator, and that he had but 5 *l.* Assets; one of the Judgments was ill pleaded: And the Plaintiff demurs. *Curia.* The Defendant hath concluded upon both the Judgments: And if one is ill pleaded, the whole is naught. *Mich. 6 W. Rot. 132. B. R.*

Two Executors sued by Original in the Common Pleas upon an *Assumpsit* of the Testator; one of them appears upon the Original, and pleads Judgments; and upon the Trial a Verdict was found against him; and the Judgment was entred against both the Executors for the Damages and Costs: And held, That although the Defendant did not come in by Summons, as in Debt, yet it was within the Statute of 9 *E. 3. cap. 3. Dyer 210.* See for this a Case at large, that says, that it is not within the Statute. *Cro. Car. 564. pl. 9.*

Where there are two Executors, one of them shall not be charged with a *Devastavit* made by his Companion; for the Act of one shall charge the other no farther than the Goods of the Testator in his Hands amount to; but not to charge him of his own Goods. *Cro. El. 318. pl. 5.*

An Executor brings an Escape against a Sheriff upon an Escape upon a Judgment recovered by himself; it must be in the *Detinet*, and it shall be Assets. *Cro. El. 327.*

The Obligor makes the Obligee his Executor, and the Executor brings Debt upon his Bond against the Heir of the Obligor: And held, that the Action well lies. *Trin. 36 Car. 2. in B. R.*

The Obligee made the Obligor his Executor; and there being sufficient Assets left to pay all the Legacies, the Money due by the Executor to the Testator was decreed to be paid to the Residuary Legatee, and not to be extinguished. *Chanc. Rep. 292.* Note, there was a Residuary Legatee.

If the Obligee makes the Obligor his Executor, this being the Obligee's own Act, is a Release in Law of the Debt. 8 *Rep. 136. a.* But it shall be Assets in his Hands. *Co. Litt. 264. b.*

A Feme Executrix takes a Debtor to Husband; this is no Release in Law, because it is in *Anter Droit*. 8 *Rep. 136. a.*

A Feme Executrix takes an Obligor to Husband, who died; this was no Release in Law. *Ibid.* See Title Suspension.

An Executor releases all Actions, Suits and Demands; this extends only to Demands in his own Right, and not to such as he hath as Executor. *Show. Rep. 153, 155.*

Where the Defendant concludes his Plea upon pleading of two Judgments, and one is naught, the whole Plea is naught.

Two Executors sued by Original in Case; one appears, and pleads Judgments, and a Verdict against him.

How the Judgment to be.

9 *E. 3. rap. 3.*

The *Devastavit* of one Executor shall not charge the other.

An Escape against a Sheriff must be in the *Detinet*.

Obligor makes Obligee his Executor, the Executor brings Debt against the Heir.

The Debtee makes the Debtor his Executor; where it is no Extinguishment.

Obligor made Executor, is an Extinguishment.

Feme Executrix marries a Debtor.

How an Executor's Release shall be construed.

An

Executor may sue for Goods before Possession.

A Grant of *omnia bona sua* by an Executor, what passes by it.

By a Grant of *totum jus titulum & interesse* in such a Lease which his Wife had as Executrix, what shall pass.

in the Right of his

A Judgment recovered as Administrator of J. S. the Defendant being in Execution escaped, and brings Escape as Executor of J. S. and naught.

Executor answerable for the King's Money received by his Testator.

Debt upon a Judgment, and counts in the *Detinet*, but not as Executor.

How it shall be intended.

An Executor pays no Costs upon a Judgment affirmed.

Costs ; because he is

He shall not put in Bail upon a Writ of Error.

An Executor *de son Tort*, who.

Where an Executor *de son Tort*, and also a rightful Executor.

be chargeable no further than comes to his Hands. 5 Rep. 34. a.

An Executor *de son Tort* cannot retain to satisfy his own Debt.

Where he shall be charged as Executor *de son Tort*, and where not.

An Executor may sue for Goods before he hath Possession of them. 8 Rep. 135. b.

An Executor grants *omnia bona sua* ; some are of Opinion that the Goods which he hath as Executor shall pass. Noy 106. Others of a contrary Opinion. 4 Leon. Case 70. But Cro. Car. 345. that they pass by Deed, not by Will.

A Man possessed of a Lease of Tithes in the Right of his Wife who was Executrix to her former Husband, grants *totum jus titulum & interesse suum de & in decimis pred.* And held, That the Grant was good, and that the Lease he had of the Tithes in the Right of his Wife passed thereby. Cro. Jac. 318. pl. 1.

A Man recovers a Judgment as Administrator to J. S. and had the Defendant in Execution, who escaped ; and brings an Escape against the Sheriff as Executor of J. S. And adjudged to be naught. Cro. Jac. 394. pl. 6.

An Executor shall be answerable for the King's Money received by his Testator. 11 Rep. from 89. to 93.

Debt upon a Judgment recovered by the Plaintiff, and counts in the *Detinet*, but not as Executor ; but says, that it was *in retardationem fidelis executionis testamenti.* Curia. It shall be intended that the Plaintiff recovered as Executor : And Judgment was given for the Plaintiff.

A Judgment is recovered against an Executor, upon which he brings his Writ of Error, and the Judgment is affirmed, yet he shall not pay any Costs ; because he is Executor, and it is *in Auter Droit.* Mich. 5 W. & M.

An Executor brings a Writ of Error, he shall not put in Bail. *Causa qua supra.*

Where a Man dies intestate, and a Stranger takes the Goods, and uses or sells them, he makes himself Executor *de son Tort.* 5 Rep. 33. b.

Where the Defendant takes Goods before the Executor proves the Will, he may be charged as Executor *de son Tort* ; for the rightful Executor shall be chargeable no further than comes to his Hands. 5 Rep. 34. a.

An Executor *de son Tort* cannot retain Goods to satisfy himself his own Debt. Cro. Eliz. 631. 5 Rep. 31, 32. 1 Roll. 603. Chanc. Rep. 33. but shall be allowed all Payments made to any but himself. *Ibid.*

Where a Person gets the Goods of the Intestate into his Hands ; he is chargeable for them as Executor *de son Tort*, until he gives Satisfaction for them to the true Administrator, or else satisfies for the true

Executor.

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true Debt of the Intestate to the Value. *Cro. El.* 88. *ph.* 10. 89. He shall be sued for Legacies as well as a rightful Executor. *Noy* 13.

There may be an Executor *de son Tort* of a Term. *Show. Rep.* 242.

The Executors and Administrators of Executors in their own Wrong, shall be liable to pay the Debts of the Testator, in the same Manner as their Testator or Intestate would have been if they had been living; *per Stat. 30 Car. 2. cap. 7. 2 Lev.* 110. *Note.* This Act is made perpetual by an Act made *4 & 5 W. & M. cap. 24. sect. 12.*

Also all and every Executor and Executors, Administrator or Administrators, of such Executor or Administrator *de jure*, who shall waste or convert to his own Use, Goods, Chattels or Estate, of his Testator or Intestate, shall from henceforth be liable and chargeable in the same Manner as his or their Testator or Intestate should or might have been; *per Stat. 4 & 5 W. & M. cap. 24. sect. 12. See Stat. 30 Car. 2. cap. 7.*

An Infant was made Executor, and the Ordinary committed Administration to another *durante minori etate* of the Executor; this ceases at his Age of seventeen Years: But where Administration is granted *durante minori etate* to one who is not an Executor, it ceases not till the Party is of full Age. *5 Mod.* 395.

An Executor shall not be compellable to account in the Spiritual Court as an Administrator is. *Noy* 28.

An Executor may have Debt for a Relief by the Common Law. *Noy* 43, 44.

By a Statute made *4 & 5 W. & M. cap. 20.* For docketting of Judgments, which see in Title Judgment, it is enacted, That no Judgment not docketted as that Act directs, shall affect any Purchaser or Mortgagee, or have any Preference against Heirs, Executors or Administrators, in the Administration of their Ancestors or Intestates Estates.

An Executor brings an Action against a Sheriff for a false Return of a *Fi. Fa.* in the Testator's Life-time, and sets forth, That he returned less than he had levied. And after a Verdict it was moved, that it was a *Tort*, and *moritur cum persona*. And that it is not within the Statute, *De bonis asportatis in vita testatoris*; but adjudged, That the Action well lay. *Williams and Cray. Pasch. 7 W.* See *March* 14.

See 43. *Chz. c. 8.*
He shall be sued for Legacies.

Executor *de son Tort* of a Term.

How far Executors and Administrators of Executors *de son Tort* shall be chargeable.

30 *Car. 2. rap. 7.*

4 & 5 *W. & M.*

Executors and Administrators of Executors or Administrators, who shall waste, shall be liable as his Testator or Intestate was.

4 & 5 *W. & M. c. 14. Sect. 12.*

When Administration *durante minori etate* of an Executor ceases, and when of an Administrator only.

Not compellable to account in the Spiritual Court.

May have Debt for a Relief.

No Judgment, if not docketted, shall affect an Executor.

4 & 5 *W. & M. rap. 20.*

An Action lies for an Executor against a Sheriff for the false Return of a *Fi. Fa.*

Statute *de bonis asportatis*.

An Executor shall have Trover for a Conversion in the Testator's Lifetime.

Executors shall have Trespass for a Wrong done to their Testator.
4 E. 3. rap. 7.

alive. So also may an Administrator by the Equity of this Statute.
Cro. El. 384. pl. 7.

Plea to an Executor that his Testator was outlawed, naught.

How a Bond not due, to be pleaded, and replied to.

Where and how one Plaintiff's Executor may summon and sever another.

make Default, he shall be severed, and the other Plaintiff may sue solely. But if the Action be by Original, then there must go out a Writ of Summons and Severance. See Title **Summons and Severance**.

How an Executor shall assent to a Devise.

Where an Executor shall have a Term, and where as Devisee.

Where as Executor, and where as Legatee.

An Executor of an Executor may refuse to be Executor to one Testator, and assent to be Executor to the other.

to the one Testator, and refuse the other. Cro. Jac. 614. pl. 4.

An Executor may sell a Term, but cannot devise it.

An Administrator *de bonis non*, may sue out a *Sci. Fa.* on a Judgment after Verdict recovered by an Executor or Administrator.

17 Car. 2. rap. 8.

An Executor may well maintain an Action of Trover for the Goods converted in the Life of the Testator, by the Equity of the Statute of 4 E. 3. cap. Cro. El. 377. pl. 28.

Executors shall have an Action of Trespass for a Wrong done to their Testators, and recover their Damages in like Manner as they, whose Executors they be, should have done if they were

A Man brings Debt upon a Bond as Executor, the Defendant pleads in Bar, That the Testator was outlawed, and so the Debt was forfeited to the King. The Plea was held to be naught, and the Plaintiff had his Judgment. 7 W.

Assumpsit against an Executor who pleads a Bond not due: How to be pleaded, and how to reply to it. 3 Lev. 57.

If after Appearance, where the Action is by Bill, one of the Plaintiff's Executors make Default, the other Plaintiff shall give him a Rule to come in and join with him, or be severed; and if he shall

make Default, he shall be severed, and the other Plaintiff may sue solely. But if the Action be by Original, then there must go out a Writ of Summons and Severance. See Title **Summons and Severance**.

How an Executor shall assent to a Devise of a Term. 1 Lev. 25.

If an Executor enters generally he shall hold the Term as Executor and not as Devisee. March 136. Cro. El. 347. pl. 19.

Where an Executor shall have a Term as Executor, and where as Legatee. See Title **Election**. See Cro. El. 347. pl. 19. 348.

Where an Executor to J. S. administers and dies, and his Executor, before he takes upon him Execution of the Will, refuses before the Ordinary to be Executor to J. S. or to administer his Goods: And held, That he might well assent to be Executor

to the one Testator, and refuse the other. Cro. Jac. 614. pl. 4.

Where a Man hath a Term as Executor, he may grant it away as he pleases; but a Devise of it is void, and it shall go to the Executors of the Devisees. 2 Plow. 525. b. 526.

Note, by the Statute of 17 Car. 2. cap. 8. it is enacted, That where any Judgment after a Verdict shall be had by or in the Name of any Executor or Administrator, that in such Case an Administrator *De bonis non* may sue forth a *Sci. Fa.* and take Execution upon such Judgment. Note, This Statute

Statute

Statute doth not extend to Judgments by Confession or *Nil dicit*, but only to Judgments after Verdicts.

No Action shall be brought against an Executor to answer Damages out of his own Estate, unless there be some *Memorandum*, or Note thereof in Writing, and signed by the Party to be charged therewith, or some other Person by him lawfully authorized. Statute of *Frauds and Perjuries*. 29 Car. 2. cap. 3.

Nothing can be a Debt in the Executor which was not a Debt in the Testator; and if a Man covenants that his Executors shall pay 10*l.* no Action lies against them for it. *Cro. El.* 232. pl. 2.

Adjudged, That an Action lies against an Executor upon a meer collateral Promise made and broken by the Testator. *Cro. Jac.* 663.

A Man makes his Will and dies; the Ordinary grants Administration before the Will is proved. The Administrator sells the Goods. Then the Executor proves the Will, and brings *Detinue* against the Vendee, and had Judgment. 1 *Plow.* from 276. to 289. a. See Title *Wills*.

Executors may execute, and be sued, or release, or sell, before Probate; but cannot sue before Probate, because the Probate must be brought into Court before the Defendant is bound to plead. 5 *Rep.* 28. 9 *Rep.* 38. a.

A Judgment in Debt in a Court of Record is preferable by an Executor in pleading before a Statute or Recognizance. 4 *Rep.* 59. b. 60. a. 5 *Rep.* 28, 29. 1 *Leon. Case* 474. 3 *Leon. Case* 364. *Cro. El.* 822. pl. 20.

The Testator and one of his Executors acknowledged a Statute; Debt upon Bond is brought against the Executors, who plead this Statute: And held that this Statute being joint and several, he may sue either the Survivor or the Executors of the deceased. 1 *Mod.* 195.

Where two Judgments are given against an Executor, the Judgment which was first given, shall be first executed; but if two Judgments are had against the Testator, he who first sues Execution against the Executor, shall be first satisfied. 3 *Leon. Case* 364. because they are Things of an equal Nature.

A Man makes his Will, and makes an Executor, and gives 10*l.* for Mourning; nay, he doth not give him any Legacy, nor make any Disposition of the Residue of his personal Estate after Debts and Legacies paid and discharged. This Residue shall not go to the Executor, but shall be distributed amongst the Relations of the Testator, by an Administration

Where an Executor may be charged out of his own Estate.

29 Car. 2. c. 3.

Where the Testator is not bound, the Executor is not.

An Action lies against an Executor upon a collateral Promise made and broken by the Testator.

A Man makes his Will and dies, Administration is granted. The Administrator sells the Goods. Then the Executor proves the Will.

What Executors may do before Probate.

Ibid. 208. b. 281.

A Judgment may be pleaded by an Executor, against a Statute or Recognizance.

Where a Matter is joint and several, either the Executors of the deceased, or the Survivor may be sued.

How Judgments against an Executor, and how Judgments against the Testator, shall be satisfied

What shall become of the Residue undisposed of.

tion to be made for that Purpose. *Gray's Case* upon an Appeal. 4 *Annæ Regiæ*.

An Executor gives Bond to pay the Testator's Debt, it is a good Administration.

Where a Rent is granted for so many Years, if *A. B.* shall live so long, the Executor can have only Debt for it, and cannot distrein by

32 *H. 8. cap. 37.* which extends only to Estates for Life or Inheritances.

After Legacies paid, Debts appear, the Legatees shall refund.

Executor may by a Bill force the Legatees to refund. *Chanc. Rep.* 136, 137, 149.

An Executor not bound to pay Legacies *sans* Security to refund.

Where a Promise to tye the Executor, where the Testator was not bound, is good.

Not so in case of an Heir, if the Heir himself be not bound.

the Testator which are bound, which he may well bind. *Cro. Jac.* 570. *pl.* 10.

An Executor shall not be charged *de bonis propriis*, but only where he pleads *ne unques* Executor.

Not upon a wilful Breach of Covenant.

An Executor gives his Bond for Payment of the Debt of the Testator; this is a good Administration *pro tanto*. 1 *Leon.* 112. See Title *Plene Administrabit*.

Where a Rent-Charge was granted to the Testator for an hundred Years, if he should live so long, the Executors cannot distrein and avow for this Rent by the Statute of 32 *H. 8. cap. 37.* for that extends only to those who have Estates for Life or Inheritance, where before the Executors had no Remedy; but here they may bring Debt. *Cro. Car.* 471. *pl.* 4.

The Executor pays out the Assets in Legacies, and afterwards Debts appear of which he had no Notice, but was afterwards forced to pay them; the

Executor is not bound to pay a Legacy without Security to refund. *Ibid.* and 149, 257.

It was moved in Arrest of Judgment, that a Promise to pay the Executor, when the Testator was not bound, is not good, no more than a Man can bind his Executor with a Bond when himself was never bound; which was agreed to be Law: But it was said that the Testator may bind the Executor where-to himself is not bound; for it is only the Goods of the Testator which are bound, which he may well bind. *Cro. Jac.*

An Executor shall not by any Act or false Plea be charged *de bonis propriis*, but only where he pleads the false Plea of *ne unques* Executor, which utterly ousts him from the Benefit of the Will. *Cro. Jac.* 447. *pl.* 15. 448.

May, upon a Covenant of the Testator's wilfully broken by himself, it shall not be *de bonis propriis*. *Cro. Jac.* 671. *pl.* 3. 672.

Executory Devise.

See **Devise.**
Remainder.

Where a particular Estate is limited, and the Inheritance passes out of the Donor: This is a contingent Remainder. *Plow. Com. 25. a.* But if the Fee by a Devise be vested in any Person, and to be vested in another upon a Contingency: This is an executory Devise. *Raym. 28.*

Where a contingent Remainder, and where an executory Devise.

Where a Contingency is limited to depend upon an Estate of Freehold, capable to support a Remainder: This shall not be construed to be an executory Devise, but a contingent Remainder only. *Saund. 388.*

What shall not be an executory Devise.

No contingent executory Estate can be touch'd by a Recovery; for that bars only where there is a Privy in Law, as him in Remainder or Reversion. *Carter 53.* Neither shall it bar the Heir where he doth not claim as Heir by Discent, but only as a Purchaser. *Mich. 9 W. Lloyd and Carew.*

A Recovery cannot touch a contingent executory Estate:

Nor bar an Heir by a Purchase.

In all Cases of executory Devises the Estates descend until the Contingencies happen: As in a Devise to A. six Months after the Decease of the Devisor, this Land descends in the mean time. *Lutw. 798.*

In executory Devises, the Estates descend till the Contingency happens.

A Man possessed of a Term of a thousand Years, devises it to B. for Life, the Remainder to C.; C. living B. devises to D. and dies; then B. dies; the Devise to C. in the Remainder is good by way of executory Devise, but the Devise by C. to D. is void, being only a Possibility at the Time of the Devise. *March 136, 137.*

Devise of a Term for Life, Remainder to another, this Remainder is good by way of executory Devise.

Exchange.

Exchange, what.

Exchange is where a Man is seised of certain Lands, and another Man is seised of other Lands: If they by Deed indented exchange their Lands, so that each shall have the other's Lands so exchanged in Fee, Fee-Tail, or for Life; this is an Exchange, and it is good without Livery. Litt. Sect. 62.

The Import of the Word *Excambium*.

In every Exchange the Word *Excambium* imports in it self tacitly a Condition and a Warranty; the one to give Re-entry, the other Voucher and Recompence: Also the same Law is of a Partition. 4 Rep. 121.

Where Part given in Exchange is evicted.

If a Man gives three Acres in Exchange for three other Acres, and one Acre is evicted, here all the Exchange is defeated; and he who gives the three Acres in Exchange, may enter again into his own Land: And the same Law of a Partition. *Ibid.* 121. b.

When Part is evicted, the Whole is defeated.

When the entire Estate in Part is evicted, all the Exchange is defeated: So when but Part of the Estate is evicted in all the Land, or in Part, by this the whole Estate may be defeated by Force of the Condition in Law. 4 Rep. 122. b. *Cro. El.* 902. pl. 6. 903.

How to be executed.

An Exchange of Lands must be executed by Entry; for if one dies before the Entry, the Exchange is void: For the Heir cannot take as a Purchaser; because he was named only to take by way of Limitation of Estate, in course of Discent. *Co. Litt.* 50. b.

A Release of one Thing in Exchange for another.

There needs no Transmutation of Possession; and therefore a Release of Rent or Estovers, or Right to Land, in Exchange for Land, is good. *Co. Litt.* 50. b.

A Possession may be exchanged for a Reversion.

If he in Reversion exchanges his Estate for a Possession, it is good. *Cro. El.* 902. pl. 6. *Moor, Case* 909.

Where Part of the Parceners Estate is evicted for Life, defeats the Partition.

Where Part of one Parcener's Estate is evicted for Life, that shall defeat the entire Partition, which is like the Case of an Exchange. *Ibid.* 902.

Unequal Value or Quantity shall not impeach an Exchange, but unequal Estate shall.

Unequal Value or Quantity in one more than in the other, shall not impeach an Exchange, but unequal Estate shall. *Ibid.* 909.

Exemplification.

Exemplification is when a Man will have any original Record written out and exemplified forth of the Court where it remains, to which Purpose he may have a Writ, as appears by Reg. Orig. fol. 290.

Exemplification, what:

One may exemplifie a Patent under the Great Seal in Chancery, and so he may a Bill, Answer and Interrogatories in Chancery, and other Proceedings there; and also any Record or Judgment in any of the Courts at *Westminster*, under the proper Seal of each Court; and such an Exemplification is authentick, and may be given in Evidence to a Jury upon a Trial, 23 *May* 1651. B. S. Without Affidavit that these Proceedings thus exemplified are examined by the Originals.

Letters Patents, Bills, Answers, &c. in Chancery, and the Records in any of the Courts at *Westminster*, may be exemplified and given in Evidence.

A Rule made, or Writ filed in the Common Pleas, or in any other Court at *Westminster*, may be exemplified in that Court where the same is made or filed. By *Pinsent* Prothonotary, and the Court there, 1651. C. B.

So likewise may a Rule of Court, or a Writ filed.

Neither an Exemplification nor *Constat* was pleadable at the Common Law, because they were only the Tenor of the Inrollment, and the Tenor of a Record is not pleadable; but now by the Statutes of 6 R. 2. cap. 4. 3 E. 6. and 13 *Eliz.* they are pleadable. 5 Rep. 53.

Neither an Exemplification nor *Constat* was pleadable at Common Law; but are made pleadable by the Statutes of

6 R. 2. cap. 4.
3 E. 6.
13 Eliz.

That every Patentee, their Heirs and Successors, and all Persons claiming under them, of any Lands, &c. granted by Letters Patents by H. 8. E. 6. Queen *Mary*, or the now Queen, may procure the same to be exemplified, which Exemplification or *Constat* under the Great Seal of *Great Britain* of the Inrollment of the Letters Patents, or so much thereof as shall serve for the Parties Title, shall be allowed to convey a Title in all Declarations, Avowries, Bars, or other Pleadings whatsoever, as if the Letters Patents were pleaded and shewed forth.

All Exemplifications of Patents or what concerns the Parties Title, may be pleaded as well as if the Letters Patents were shewn.

13 Eliz. cap. 6.
3 & 4 E. 6. cap. 4.

Exigent.

Exigent.

An Exigent, what.

Exigent against two, where the Words *nec aliquis eorum comparuit* are omitted, is erroneous; and why.

The common Error for reverting of Outlawries.

Where the Proclamation on the Exigent must be delivered three Months before the Return.

Stat. 4 & 5 M. & W. cap. 22. sect. 4.

An Exigent is a Writ which is sued out after a Capias, Alias and Pluries, in order to outlaw the Defendant if he doth not appear.

An Exigent against two which is returned in these Words, *non comparuerunt*, and the Words *nec aliquis eorum comparuit* omitted, is erroneous, and must be reversed. 21 Car. B. R. For if one of the two do appear upon the Exigent, he that appears ought not to be outlawed, and so the Return is uncertain; for it cannot be known which of the Parties did not appear, nor consequently which of them is outlawed.

The common Error for reverting of Outlawries in the Crown-Office, is upon the Return of the Exigent *ad Com. meum tent. 20 Martii anno, &c. apud, &c. pro Com. meo*, and doth not say *in & pro Com.* for it may be held for the County, but not in the County.

Upon suing out of an Exigent in all criminal Matters before Conviction, there shall be a Proclamation with the same Teste and Return delivered to the Sheriff three Months before the Return.

Exposition.

Deed.
Proviso.
See. Use.
Words.

Grounds for the Exposition of Deeds.

In the Exposition of Deeds the Words shall always be construed,

First, According to the Intent of the Parties, and not otherwise.
Secondly, That the Deed shall never be void, when the Words can be applied to any Intent.
Thirdly, That the Words shall be taken most beneficially for the Person who takes by them. 1 Plow. 160. b. 161.

It is a Rule in the Exposition of Grants, That they shall always be taken most strongly against the Grantor. Carter 104.

Grants to be taken most strongly against the Grantor.

The best Exposition of the Statute-Law is to be had by consulting with the Makers of them, and how they did in their Time interpret them. Hill.

Statutes best expounded by consulting with the Makers of them.

23 Car. 1. B. R. For they knew best for what Ends they made the Statutes: And *contemporaria legis expositio est optima.*

Words that are insensible ought to be rejected: So also Words of known Signification so placed in a Deed, that they make it repugnant and senseless, are to be rejected equally with Words of no Signification. Vaugh. 176.

Insensible Words are to be rejected.

So likewise Words misplaced, so as to make the Deed repugnant and senseless.

What appears not to be, must be taken in Law to be as if it were not. Ibid. 169.

What appears not to be, must be taken as if it were not.

Particular Words put after general Words shall qualifie them. 2 Lev. 255.

Particular Words.
General Words.

The Office of an *Innuendo* is certainly to decypher the same Person who was incertainly named before. 4 Rep. 17. b. 5 Mod. 344.

An *Innuendo*, what.

Pro, when it signifies a full and compleat Satisfaction, and when it signifies a Condition. 4 Rep. 88.

Pro, when Satisfaction; when a Condition.

In some Cases the Word *pro* hath the Force of a Condition, where the Thing granted is executory, and the Consideration of the Grant is a Service or some other Thing, for which there is no other Remedy but the stopping of the Thing granted. An Annuity is granted *pro consilio*, &c. The Condition is not precedent, and need not to be averr'd to be performed when the Annuity is demanded. Hob. 41.

When the Thing granted is executory.

The Words *usually letten* shall be intended of Lands twice or more times letten. Ibid. 33.

Usually letten.

The Word *videlicet* in a Deed is put to expound or make plain the Premises of the Deed in which it is put, and not to destroy it, or make it ambiguous; and therefore that which it brings in, ought not to be contrary to it; for if it be, the *videlicet* is void. Pasch. 23 Car. B. R. And the Deed shall be taken as if it were left out.

Videlicet.

If all the Words of a Deed cannot stand together without Absurdity, the Law will make such an Exposition of them, that the whole Deed may be good in Law. Pasch. 24 Car. B. R. Because the Sense of the Parties to the Deed is collected out of the whole Deed; *ut res magis valeat quam pereat*.

If Words cannot stand together without Absurdity, the Law will expound them so that the Deed may be good.

The second Sentence shall explain the first.

When there are two Sentences in a Deed, the second may well explain the first; for *ex precedentibus & consequentibus est optima interpretatio*. 1 Roll. Rep. 375, 376.

Two Grounds to be observed in the Exposition of Deeds.

These two Grounds are to be observed in the Exposition of Deeds.

1. If the second Part contradicts the first, the second Part shall be void.

2. If the last Part expound the former Part, both of them shall stand together. *Ibid.*

If Words have a double Intendment, one against Law, the other with; the last shall be taken.

Whenever the Words of a Deed, or of the Parties without Deed, may have a double Intendment, and the one standeth with Law and Right, and the other is wrongful, and against Law; the Intendment that standeth with Law shall be taken. *Co. Litt. 42. b.*

The Law will transpose Clauses to come at the true Meaning of them.

The Law will transpose Clauses in Deeds to come to the true Meaning of them, but not confound them. *Carter 150, 153. Co. Litt. 217. b.*

Præd. thirty Acres; adjudged void.

Debt for Tithes of twenty Acres *quas quidem præd.* thirty Acres he had sown, and carried away the Sheaves, &c. There on Motion to arrest Judgment, the *præd.* thirty was adjudged void, and it shall be intended *præd. Acras.* 1 *Lutw.* 97.

Anno Regis, and *Anno Regni Regis.*

Anno Regis and *Anno Regni Regis* is all one. *Id.* 113.

Presentment *ad Ecclesiam.*

Presentment *ad Ecclesiam* taken for presentation, institution & induction. *Idem* 156.

ut, an Affirmative.

Where *ut* is an Affirmative, as *ut filius & hæres* is affirmative that he is Heir, so *ut Administratrix*, or *ut Executor*, is affirming that she is Administratrix, &c. *Id.* 222.

Words expound one another.

Words in Deeds of Settlement and Revocations expound one the other. 3 *Lev.* 213.

Quendam.

Exposition of the Word *Quendam.* 1 *Lutw.* 375.

Towards his Charges at Law.

The Words, towards his Charges at Law, shall be expounded in full Satisfaction. *Id.* 533.

Insimul cohabitarent.

Of the Words in Articles between a Man and a Woman sole to pay to her 16 l. so long as they *insimul cohabitarent*, *anglice* lived together. *Id.* 557.

Præd.

Of the Word *præd.* *Id.* 428.

Failing, 7. s.

Of the Words *Failing* 7. s. *Id.* 804, 809.

Faldage.

Of the Words *Faldage* and *Falde cursus*, and to what things they extend. 2 *Lutw.* 1258, 1259.

Toll, Stallage Passage, Or either of them.

Of the Words *Toll*, *Stallage* and *Passage.* *Id.* 1518.
Of the Words, Or either of them. *Id.* 1629. C.

Exposition.

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Dies Dominicus non est Dies Juridicus. 2 Saund. 42.

Sunday no Law-Day.

Ad ea quæ frequentius accidunt jura adaptantur. 2 Saund. 67.

To what the Laws are adapted.

Where the Addition of useless and impertinent Words shall not hurt. 2 Saund. 79, 80.

The Addition of useless and impertinent Words shall not hurt.

The better Construction must be made for the supporting of a Judgment. 2 Saund. 173, 174.

The best Construction for the supporting of a Judgment.

The Law abhors Circuity of Action. 2 Saund. 150.

No Circuity of Action.

Where Words are idle where plac'd, they shall operate upon a subsequent Sentence. 2 Saund. 166.

Vain Words in one Sentence may operate upon another Sentence.

Modus & conventio vincunt legem. 2 Saund. 167.

Modus & conventio vincunt legem.

Where the Words are, that *A. B. habens jus & titulum, &c. intravit*, shall be construed, that *A. B. intravit*, and then had Right. 2 Saund. 180.

A special Construction upon the Words, *habens legalem titulum & intravit*.

Where a conjunctive Sentence shall be taken in the disjunctive & distributive. 2 Saund. 292.

Conjunctive taken to be disjunctive and distributive.

When an unusual Word comes in Question, the Opinion of Grammarians is necessary for the Construction of it. 1 Leon. Case 326.

When the Opinion of Grammarians is necessary.

We ought always in the Construction of Deeds to have Regard to the Meaning of the Parties, and not to argue the Aptness of Latin Words. 2 Leon. fol. 129.

Regard must be had to the Meaning of the Parties.

Insensible Words in one Sentence made all the Sentence insensible, though it was perfect without them. 2 Saund. 306.

Insensible Words spoiled a Sentence, which was good without them.

Utile per inutile non vitiatur. Ibid. 306, 369.

Utile per inutile, &c.

Expressio eorum quæ tacite insunt nihil operatur. Ibid.

Expressio eorum, &c.

351.

Where one Part of a Sentence shall be restrained and expounded by the other, and where not. 1 Saund. 59.

Where Part of a Sentence shall be restrained.

Where a restrictive Clause shall extend to both Sentences, and where not. Ibid. 60.

To what a restrictive Clause shall extend.

An insensible Clause doth not vitiate that which is sensible. Ibid. 320.

Where an insensible Clause hurts not.

Actio personalis moritur cum persona. Ibid. 210.

Actio personalis moritur, &c.

Cessante statu primitivo, cessat & derivations. Ibid. 200.

Cessante statu primitivo, cessat, &c.

Where the Recital of the Condition of a Bond shall restrain the subsequent indefinite Words. Ibid. 413, 414.

Where a Recital shall restrain indefinite Words.

Vestura terre, what. 4 Leon. Case 118.

Vestura terre.

How it is taken with *obligamus nos & quemlibet nostrum conjunctim*. 2 Leon. Case 1236.

Quemlibet.

The

*Videlicet, see postea
Scilicet.*

De in a Deed,

Tenement.

Uterque.

Utrique partium.

Erigere, exaltare.

Domus.

Ea intentione.

Puer.

Quilibet.

*Usually occupied, usu-
ally letten.*

Firma.

*Ex certa scientia & mero
motu.*

Imposterum procreand.

Terminus.

Lollard.

Capellanus.

Ita quod.

Sub conditione.

Ad effectum.

Pro.

Proviso.

Si.

Dedi.

Obstupavit.

Case 273. Obstupavit
continued.

Times.

ibi.

Licet.

Exposition.

*The Meaning of the Word (viz.) 3 Leon. Case
178. fol. 126. 5 Mod. 28, 29. Moor, Case 1236.*

*Of the Signification of the Word De in a Deed.
1 Leon. 164.*

The Word Tenement. 1 Leon. 188. Case 265.

*The Word uterque. 1 Leon. Case 326. 2 Leon.
fol. 219.*

How to be expounded. Cro. El. 885. pl. 24.

The Words erigere and exaltare. 2 Leon. Case 222.

*The Word (Domus) est nomen collectivum, and
contains many Buildings, as Barns, Stables, &c.
2 Leon. Case 230.*

*The Words ea intentione. 2 Leon. Case 275.
fol. 217.*

The Word Puer. Ibid.

The Word Quilibet. 2 Leon. fol. 219.

*The Words usually occupied with it, amounts to
the Words usually let with it. 2 Leon. Case 287.*

*Firma signifies sometimes Lands, sometimes Rent.
3 Leon. Case 29.*

*The Exposition of the Words ex certa scientia &
mero motu in Patents. 3 Leon. Case 69. fol. 49.*

The Meaning of those Words. 3 Leon. Case 126.

*The Exposition of the Word Terminus. 3 Leon.
Case 159.*

*The Meaning of the Word Lollard. 3 Leon.
Case 251.*

What, and the Original of them. Litt. Rep. 95.

*Ita quod, where it makes a Condition. 4 Leon.
Case 161. fol. 70.*

Makes a Condition. Ibid.

Where it makes a Condition. Ibid.

*Pro, where it makes a Condition. Ibid. It makes
a Condition in Things executory. 2 Saund. 352.*

*Where it makes a Condition. Ibid. 71, 72. How
to be expounded. Popb. 27.*

Si, where it makes a Condition. Ibid. 71.

*The Word Dedi, where Money is given, and
the Deed inrolled, shall amount to a Bargain and
Sale. 4 Leon. Case 224.*

*Obstupavit viam is good without shewing of any
manner of Erection of Gate, Ditch, &c. 4 Leon.*

amounts to obstruxit. Ibid. It implies a Nufance con-

For the reasonable Construction of Times.

4 Leon. 177.

*The Word sibi comprehends the singular as well
as the plural Number. Cro. Eliz. 74. pl. 24.*

Where licet is a good Affirmation. Cro. El. 75. pl. 33.

Exposition:

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A **Curtilage** is Parcel of an House. *Cro. El. 89. pl. 14.*

What it is, and how it will pass. *Ibid.*

When an *Innuendo* is brought in to explain some uncouth Words and Expressions used in some Countries, it ought to be help'd out with an Averment. See *Cro. El. 307. pl. 8.*

The Exposition and Extent of the Word. *Cro. Eliz. 782. 125. pl. 5.*

The Definition of it, and what it is. *Cro. Eliz. 789.*

The Exposition of it. *Cro. Eliz. 822. pl. 21.*

This is no express Allegation. *Cro. El. 857. pl. 24.*

Where the Word *Scilicet* shall be void and idle, and where not. *Cro. Jac. 618. pl. 8. Plow. Com. 8. Cro. Jac. 428. pl. 3. 620. 1 Saund. 118, 119, 170, 286, 287.. 2 Saund. 290, 291.*

What they are. *Cro. Car. 179.*

Pimp is known to be a Name for a common Pandar. *Cro. Car. 393. pl. 5. 394.*

Decimas Garbarum is always Corn. *Cro. Eliz. 633. pl. 26.*

If a Man be to assure so many Acres, it must be according to the Estimation of the Country where the Land lies, not the Statute-Measure. *Cro. El. 665. pl. 15.*

All the Court held them to be but one Name. *Cro. El. 776. pl. 9.*

Cro. Eliz. Taylor, how. 861. pl. 34.

The Exposition of *decem par. velorum & tegulorum*. 2 Saund. 74.

The Word *ad sequendum* signifies *ad prosequendum*, and also *ad defendendum*. *Ibid. 95.*

The Extent of it. *Ibid. 96.*

In Consideration of a Covenant performed, and of a Covenant to be performed. *Ibid. 156.*

The Meaning of it. *Ibid. 156, 157.*

How it shall refer. *Ibid. 180.*

Signifies as well to borrow as to lend. *Ibid. 291.*

How to be construed. *Ibid. 181.*

The Meaning and Use of it in pleading. 1 Saund. 117

Non obstante, see Title *Non Obstante*.

Sciens not traversable, see Title *Traverse*.

Scilicet repugnant to the Matter precedent is void, as well after a Demurrer as a Verdict.

So that, the Meaning of those Words 2 Lev. 150.

Thence, the Signification of it. 2 Lev. 241, 242.

Then and when; these Words are Demonstration of Time. 3 Rep. 21. a. b.

Curtilage.

Garden.

Innuendo.

Premissa.

Simony.

Per Nomen.

Quorum tenor.

Scilicet.

Jampna & Braeria.

Pimp.

Garba.

Acres.

Amie and Agnes.

Palam & publice.

Decem paribus velorum & tegulorum.

Sequendum.

Concessi.

In consideration of a Covenant performed, and to be performed.

In Consideration per-
formationis inde.

Habens being a Participle.
Mutuo.

Contra formam & effectum.

Et quod.

Non obstante.

Sciens.

Scilicet, where void.

So that.

Thence.

Then and when.

Exposition.

- Et sic.* 2 Lev. 140, 141. 5 Mod. 351. See in Title Plea and Pleadings.
- Relation. Relation, not to the next Antecedent, but what is most agreeable to the Matter.
- Quando. Quando; the Meaning of it in the Words of a Plea, *Venit & defendit vim & injuriam quando*, &c. Co. Litt. 127. b. Antea Title Abatement.
- Conjunctim & divisim.*
Et vim eorum conjunctim & divisim.
Una cum. *Conjunctim & divisim.* Moor, Case 1154.
Et vim eorum conjunctim & divisim. Ibid.
Una cum. Moore, fol. 882.
- Modo & Forma*, where essential, where Form. Where the Issue taken goes to the Point of the Writ or Action, there *Modo & Forma* are but Words of Form: But when a collateral Point in Pleading is traversed, as if a Feoffment be pleaded by Deed, and it is traversed *absque hoc quod feoffavit Modo & Forma*; here these Words are so essential, that the Jury cannot find a Feoffment without a Deed. Co. Litt. 281. b.
- Dubious Words. Where Words are dubious they ought to be taken in that Sense, that no Wrong shall be done. 2 Lev. 155.
- General Words in a Release. General Words in a Release restrained by the particular Occasion thereof. 3 Lev. 273.
- Curtilage. A Curtilage is a Member, or at the least an Appendix of a Messuage. 3 Leon. Case 283.
- Imaginatio. Imaginatio, what. 4 Leon. Case 137.
- Conspiratio. Conspiratio, what. Ibid.
- Save harmless. How to be construed. 1 Saund. 218.
- May. May in a Covenant or Condition of a Bond. Popk. 40.
- Messuage. A Messuage, what. 2 Keb. 118. pl. 64.
- A Grant of *omnia bona*, what passes. By the Grant of *omnia bona*, all Chattels real and personal pass. Litt. Rep. 87.
- So of *Catalla Felonum*. By a Grant of *Catalla Felonum* the Grantee shall have Choses in Action, as Bonds, &c. Litt. Rep. 87. See in Title Chose in Action.

Extent.

See { Audita Querela.
Contribution
Elegit.
Execution.

A Writ of Extent is to value the Lands of one bound by Statute, &c. that hath forfeited it, and to deliver to the Conuzee at such indifferent Rates, as by the yearly Profits the Conuzee may be in time satisfied his Debt. Terms of the Law. 189. b.

An Extent, what.

Lands in the Hands of a Trustee may be extended for a Debt due to the King. *Hill. 23 Car. B. R.* and also now for the Debt of a common Person, by the Statute of *Frauds and Perjuries*.

Lands in the Hands of a Trustee may be extended.

Sci. Fa. against Conuzee and Assignee of a Statute on Satisfaction. 3 *Keb.* 15. *pl.* 24.

Sci. Fa. against Conuzee of a Statute.

Against Heir and surviving Conuzor, &c. *Ibid.* 50. *pl.* 27.

Against Heir and surviving Conuzor.

No actual Seisin on an Extent can be. 1 *Keb.* 243. *pl.* 61.

No Seisin can be on an Extent.

On Judgment of all *quoad* one Joint-Tenant. *Ibid.* 92. *pl.* 52.

On Judgment of all as to one Joint-Tenant

Of Moiety in *Wales* on Judgment in *B. R.* 2 *Keb.* 34. *pl.* 47.

Of Moiety in *Wales*.

An Extent ought always to be by Inquisition, and the Sheriff without an Inquisition cannot execute it. *Cro. Jac.* 569. *pl.* 9.

An Extent must always be by Inquisition.

Note, The Extensors ought to be careful in the Matter, and not to value the Lands too high; for if they do, the Plaintiff may at the Return of the Writ pray that they may retain the Lands, and then he shall have Execution against their Lands for the Debt. *Cro. Jac.* 12.

What must be done where Extensors over-value the Land.

When Land is seized into the King's Hands, and afterwards a *Liberate* is awarded, the Party may presently thereby enter without the Sheriff's delivering of Possession. *Cro. El.* 463. *pl.* 15.

After a *Liberate* awarded the Party may enter without Possession delivered by the Sheriff.

The Conuzee hath no absolute Property by the Extent, till the *Liberate* executed.

Where an Extent is sued out, and he who sues it dies after the *Teste* and before the Return of the Writ, whether void or no.

What Tenants Goods shall be taken upon an Extent, and what not.

Where the Conuzor cannot enter, but must have his *Sci. Fa.*

Where the Conuzee shall hold over.

How the King can grant Lands extended at his Suit.

for Years. Also, this shall not pass the Debt without special Words. 3 *Lev.* 134, 135.

Where one of the Conuzors shall not be solely charged.

Also the Conuzor's own Land may be solely extended, when divers Persons have purchased some of the Land subject to the Recognizance: Because the Purchasors are in other Degree than the Conuzor himself, yet one of the Conuzors shall not be solely charged. 3 *Rep.* 13. a.

Two are bound in a Recognizance or Statute, each is bound in the whole.

An Extent and *Liberate* is good, though the *Liberate* be not returned.

good. 4 *Rep.* 67. a. Though regularly when Inquisitions are taken, the Writ ought to be returned. See Title *Execution*.

How the Conuzee shall account upon a *Sci. Fa.*

An Office is extendible.

A Reversion cannot be extended.

Where a Defendant in an Extent upon an *Elegit* may enter:

The Conuzee hath no absolute Property by the Extent until the Delivery upon the *Liberate*; and at the Return of the Writ may refuse them if overvalued. *Cro. Car.* 148. pl. 3. 149.

Where an Extent is sued out, and the Party who sues it died after the *Teste*, and before the Return of the Writ, the Question was, Whether it were void or no? Two Judges held it to be void. *Croke* held it to be good. *Cro. Car.* 450. pl. 23. 457.

What the Plaintiff is to do by Vertue of the Statute of 8 *Anna*, where an Extent comes against the Goods of any Lessee for Life, Years, Will or otherwise. See Title *Execution* and *Rent*.

The Conuzor cannot enter upon the Conuzee after Satisfaction, but is put to his *Sci. Fa.* in the Case of an Extent: But in Case of an *Elegit* he may enter. 4 *Rep.* 67. b.

Where Part of the Lands extended are evicted, the Conuzee shall hold over the Residue of the Land until the Debt be satisfied. 4 *Rep.* 66. a.

Lands extended at the King's Suit for a Debt; the King grants the Lands extended in Fee: It is void; because it should be by an Exchequer-Lease

Also the Conuzor's own Land may be solely extended, when divers Persons have purchased some of the Land subject to the Recognizance: Because the Purchasors are in other Degree than the Conuzor himself, yet one of the Conuzors shall not be solely charged. 3 *Rep.* 13. a.

Two or more are bound in a Recognizance or Statute, every one is bound in the whole; yet the Lands of the one shall not be solely extended. 3 *Rep.* 14.

Where there is an Extent upon a Statute, and a *Liberate* thereupon, upon which several Houses are delivered, but the *Liberate* is not returned; yet it is good. 4 *Rep.* 67. a. Though regularly when Inquisitions are taken, the Writ ought to be returned. See Title *Execution*.

In a *Sci. Fa. ad computandum*, the Conuzee shall account according to the extended not the real Value of the Land. *Hard.* 136.

It was decreed that an Office is extendible in Law or Equity. *Chanc. Rep.* 39.

A Reversion cannot be extended. 2 *Sid.* 86.

In case of an *Elegit* upon a Judgment after the Plaintiff hath received his Satisfaction, the Defendant may enter, for there the Plaintiff shall not have

have Damages, Costs, or other Thing, but only the Land, until the Debt be satisfied: But in case of an Extent upon a Statute the Conuzor cannot enter, for the Conuzee shall hold the Land, not only until he is satisfied the Debt with Damages for the detaining of it, and also his Costs of Suit; but also for his reasonable Labours and Expences, &c. for the Entry is, *Tenendum ut liberum Tenementum*, &c. *quousque debitum prædictum una cum damnis & custagiis suis necessariis & rationabilibus ut in laboribus factis dilationibus & expensis*, &c. which are uncertain. And the Conuzee being in by Matter of Record, he shall not be put out but by Record, viz. a *Sci. Fa.* brought against him; and the Court of Chancery, out of which the Writ issues, shall adjudge of the Damages, Labours, Expences, &c. *Co. 4 Rep. 67. b.* See *March Rep. 207, 208, 209, &c.*

But not upon an Extent upon a Statute.

It appears by the Preamble of the Statute of 32 H. 8. cap. 5. and divers Books, that after a full and perfect Execution had by Extent returned, and of Record, there shall never be any Re-extent upon any Eviction; but if the Extent be insufficient in Law, there may go out a new Extent. *Co. Litt. 296. a.*

When a Re-extent may be sued out upon an Eviction.

32 H. 8. c. 5.

Extinguishment.

See { Appurtenant.
Executors.
Suspension.
Unity of Possession.

Extinguishment is where any Rent or Service is going out of any Land, and he who hath the Rent or Services purchases the Land, whereby he hath as good an Estate in the Land, as he hath in the Rent, then the Rent is extinct: So also where the Debtee makes the Debtor his Executor, or where the Lessor enters tortiously against the Lessee's Consent,

Extinguishment, what.

If one have used to hold a Court by Custom, as by Law he may, if he afterwards purchase Letters Patents to enable him to hold this Court, he has thereby extinguished the Custom, and must now hold the Court by Vertue of his Letters Patents.

If he who holds a Court by Custom purchases Letters Patents to hold it, the Custom is extinguished.

Extinguishment.

Mich. 24 Car. 1. B. R. For the Party hath thereby waved the Custom, and hath made Election to hold his Court by another Authority ; and both Authorities cannot stand together.

Obligee makes the Obligor's Wife his Executrix, this is a Suspension.

Two are bound jointly and severally in a Bond, the Obligee made the Wife of one of the Obligor's his Executrix, who administered ; then her Husband made her his Executrix, and died, leaving Assets to pay the Debt ; then the Executrix died, and Administration of the Goods of the Obligee not administered by his Executrix (the Obligor's Wife) was granted to the Plaintiff, who brought his Action against the surviving Obligor ; and adjudged that it would not lie. First, Upon the Obligee's making the Wife of one of the Obligor's his Executrix, the Action was at least suspended : And then the Rule is, That a personal Action once suspended is extinct. (*Note, This Rule hath an Exception : For if a Feme-Executrix takes the Debtor to Husband, this is but a Suspension during the Coverture. 8 Rep. 136.*)

Debt satisfied by Retainer.

Secondly, When the Obligor made the Executrix of the Obligee his Executrix, and left Assets, the Debt was presently satisfied by way of Retainer. *Hob. 10. Moor 855. Brownl. 76. Cro. Jac. 271. Telv. 196.*

Debtee makes Debtor Executor, where no Extinguishment in Chancery.

The Obligee makes the Obligor (who owed him on Bond 400 l.) his Executor, and after giving of several Legacies, he gives the Residue to J. S. There was more than enough to pay all the Legacies : The Question in Equity was, Whether this 400 l. should be paid to the Residuary Legatee, or was extinguish'd ? Decreed, That it should be paid to him. *Chanc. Rep. 292. See Title Executors.*

Entry upon Part suspends the whole Rent.

In Debt for Rent the Defendant pleaded an Entry by the Plaintiff into the Land, and pulling down Part of an House let with it ; the Plaintiff replied, that the Defendant re-entred into the Land, and that Part of the House which stood ; the better Opinion was, that the Rent was suspended. *Cro. El. 341. pl. 8.*

What shall be an Extinguishment of Rent.

No Extinguishment of Rent shall be, but where the Lessor enters injuriously, and against the Lessee's Consent : Not where all is done by Agreement. *2 Lev. 143.*

A Release of Common in one Acre extinguishes the Whole.

A Release of Common in one Acre is an Extinguishment of the whole Common. *Show. Rep. 350.*

A Copyhold is extinct by taking a Lease of the Manor.

A Copyholder takes a Lease of the Manor, his Copyhold is extinct. *Cro. El. 7. pl. 5.*

Where Union is an Extinguishment.

A perpetual Union of the Tenancy to the Rent, or Rent to the Tenancy, is an Extinguishment of the Rent. *Vaugh. 39.*

Where upon a Grant of a Rent there is no Remedy for the Arrears.

If a Man be seised of a Rent-Charge in Fee, and grants it to another and his Heirs, and the Tenant attorns, such Grantor is without Remedy for the Rent Arrear before his Grant, for distrein he cannot, and other Remedy he hath not. *Vaugh. 40.*

False Imprisonment.

See { Damages.
Sheriff.
Trespals.
Verdict.

False Imprisonment is where a Man is arrested and restrained from his Liberty, without a legal Process, and due Course of Law; and for such illegal Usage, he shall recover his Damages.

False Imprisonment, what.

An Action of False Imprisonment lies against a Bailiff, by the Party that is arrested by him after the Return of the Writ is past. *Hill. 23 Car. 1. B. R.* For this is all one as if he were arrested without a Writ; for by the Return of the Writ the Sheriff's and Bailiff's Power is at an End as to that Writ; and so they have no Power by Vertue thereof to arrest the Party.

False Imprisonment lies against a Bailiff for executing a Writ after the Return is past.

If a Process be unduly obtained, and the Party against whom it is had, be thereupon taken and imprisoned, an Action of False Imprisonment lies by the Party imprisoned against him at whose Suit he is imprisoned, but not against the Officer who executes it. *Mich. 24 Car. 1. B. R.*

If a Man be imprison'd by a Process unduly obtained, he may have an Action against the Plaintiff, but not against the Officer.

Where a Court has Jurisdiction of a Matter, and makes out an erroneous Process, the Officer who executes it shall be excused: But if the Court out of which it issued hath no Jurisdiction of the Matter, then whoever acts under it is a Trespasser.

If the Court has Jurisdiction, the Officer shall be excused who executes an erroneous Process; otherwise if the Court have no Jurisdiction.

A Man may be imprisoned for a Contempt done in Court, but not for a Contempt out of Court, nor for a private Abuse. *Cro. El. 689. pl. 24.*

A Man may be imprisoned for a Contempt in Court, not out of Court, nor for a private Abuse.

In an Action of Trespals, Assault, and False Imprisonment, *quousque finem fecit septem Librarum*: Upon Evidence at the Trial it appeared, that there was but 5 l. paid by the Plaintiff to the Defendant

False Imprisonment *quousque finem fecit 7 l.* and proved but 5 l. paid, and good.

for

for his Deliverance, which varied from the Declaration, that being 7 l. But the Chief Justice said, it was well enough ; for the Action is for the Trespass, and False Imprisonment, and the other is only for Aggravation of Damages. *Trin. 8 W. in C. B.*

Three found severally guilty, and several Damages.

How the Judgment to be.

Variety of Matter must not be put in Issue upon *de son Tort*.

How a Justification must be for taking of Goods upon a *Fi. Fa.*

In False Imprisonment against an Officer, he may plead Not guilty, and give the special Matter in Evidence.

7 Jac. cap. 5.

21 Jac. cap. 12.

In Trespass, Imprisonment, and taking of Goods, three are found severally guilty, and several Damages are found : Judgment shall be, *de melioribus dampnis*, if the Plaintiff pleaseth. 3 Lev. 324. See Title Damages.

In False Imprisonment the Defendant justifies by Writ, Warrant and Arrest, and traverses all other Times and Places. The Plaintiff replies *de son Tort* ; and held naught, to put Variety of Matters in Issue, as Matters of Record, and Matters of Fact, upon *de son Tort*. 3 Lev. 65.

In Trespass for the taking of the Plaintiff's Goods, and detaining of them *quousque finem fecit*, the Defendant justifies by Vertue of a *Fi. Fa.* until the Plaintiff had paid to the Defendant the Money for the Goods taken upon the *Fi. Fa.* to the Use of the Sheriff ; and this was held to be naught : Because the Detainer ought to have been pleaded to be, until the now Plaintiff had paid the Money to the Use of the Plaintiff in the *Fi. Fa.* 2 Ventr. 93. Lutw. 924.

If an Officer, viz. Justice of the Peace, Constable, or other Parish Officer, be sued for False Imprisonment, he may plead the General Issue, and give the Special Matter in Evidence ; and if he recovers, or the Plaintiff be nonsuited, he shall have his double Costs : By the Statute of 7 Jac. cap. 5. See 21 Jac. cap. 12.

False Latin and Form.

The Court with the Consent of the Grand Jury amends False Latin in their Bills, but will not alter the Substance of them.

B. R. For that were to make new Bills ; but the altering them in the Form only alters not the Substance of them.

Where a Latin Word shall not vitiate, and where it shall.

The Court uses to amend False Latin and Form in Bills presented to them by the Grand Inquests every Term by their Licence and Consent : But the Court cannot

amend Matter of Substance in them. *Mich. 22 Car. 1.*

Where a Latin Word is significant, though it be not good Latin, yet an Indictment, Declaration or Fine shall not be made void by it : But if the

False Latin and Form.

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the Word be not Latin, nor a Word allowed by the Law, but is altogether insensible; there, if it be in a material Point, it makes the whole vitious. 5 Rep. 121.

Where False Latin in several Places of a Declaration shall not hurt it. *Lutw. 885. b.*

Where False Latin shall not hurt a Declaration.

How in a *Quo Warranto* a Man may claim such Franchises by the general Words of *Tot talia eadem & consimilia*, without shewing of or pleading of the Charter: And when he shall be forced to plead a Charter. 9 Rep. 27.

How in a *Quo Warranto* a Man may claim Franchises.

Also, when a Man claims such Franchises by the general Words of *Tot talia privilegia*, &c. as such an one had; which Estate, he to whom the References are made, ought to have in the Franchises. 9 Rep. 27. b.

Where Franchises are claimed by general Words.

What ancient Franchises ought to have an Allowance, and what not. 9 Rep. 27. b. And of Allowance of Charters in Eyre, King's Bench, Common Pleas and Exchequer. *Ibid. 28.*

What ancient Charters ought to have an Allowance, and what not.

Fees.

See { Indictments.
 { Sheriff.

In the Case of *Hene and Nisbit*, *Pasch. 1659.* by *Glyn* Chief Justice. There are no Fees due to the Sheriff for executing an *Habere facias possessionem*, and so let it be declared, although they have usually taken Fees for executing such Writs.

No Fees are due to the Sheriff for executing an *Hab. fac. possessionem*.

There are no Fees due to the Sheriff by the Common Law, from the Subject, for executing his Office; but he is to execute it *virtute officii* at his own Charge; and the Government always takes care to make choice of a Man of a good Estate in Lands in his County, who can bear the Charges of it, and answer the King and his Subjects for any Misdemeanor he shall commit in his Office.

No Fees due to the Sheriff at Common Law.

An Action of Debt or Case doth lie for an Attorney for his Fees, against him that retained him in his Cause. *Mich. 22 Car. B. R. Quere*, Whether it lies for a Counsellor without a special Retainer?

Debt or Case lies for an Attorney's Fees.

This Court will grant an Attachment against a Man who refuses to pay the Fees of the Court.

Attachment against the Client to have him committed until he pay the Fees due; by *Roll Chief Justice, 1650.* For the not paying the Fees is a Contempt to the Court, and the Court is bound to protect their Officers in their Rights.

Nothing shall be taken by the Officer for a Report or Certificate in a Cause referred by the Court.

1 Jac. 1. cap. 10.

The Penalty.

Report or Certificate, and to be deprived of his Office in the same Court, to whom the Forfeiture is to be, and where to be sued for.

What the Clerk may take for the Copy.

every Penny that he shall take over and above.

The Statute which gives Fees, extends only to Executions in Counties.

29 Eliz. cap. 4.

dred afterwards: But then they ought to pay their own Bailiffs out of their Poundage-Money for their Pains. But of late, the Sheriffs of Cities do demand the same as Sheriffs of Counties have: And I have heard they have recovered it.

Note, The Statute only says, That they may take the above-mentioned Sums.

Fee-simple.

Fee-simple, what.

Fee-simple is a lawful and pure Inheritance to hold to a Man and his Heirs for ever. Litt. Sect. 1. Co. Litt. 1. a.

There

Fee-simple.

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There are three several Sorts of Fee-simple, viz.

Several Sorts of Fee-simple.

1. Fee-simple absolute, to a Man and his Heirs for ever.

Absolute.

2. Fee-simple conditional, where the Estate is defeasible by not performing the Condition.

Conditional.

3. A base Fee is where A. enfeoffs B. *Habend.* to him and his Heirs, so long as C. hath Heirs of his Body; this is a qualified base Fee descendible and determinable, upon which no Remainder or Reversion can be expectant. *Seymor's Case*, 10 Rep. 97. *Carter* 208, 209.

Base.

A Feoffment made of Lands to one and his Heirs males is a Fee-simple, for want of the Word *Body*, viz. Heirs males of his Body. *Mich.* 23 *Car. B. R.* For it is not an Estate comprized within the Statute of *Westm. 2. de donis conditionalibus*, and before that Statute there were no Estates in Tail, but such Estates were Fee-simple conditional *post prolem suscitatum*.

A Feoffment to one and his Heirs males is a Fee-simple.

A Fee-simple cannot be limited upon a Fee-simple; if it be, it is void. *Dyer* 33. pl. 12. 225.

One Fee-simple cannot be limited upon another.

A Devise to a Man's right Heirs in Fee of Lands in Fee-simple, is void, and the Heir shall be in by Discent.

A Devise to a Man's right Heirs in Fee of Lands in Fee-simple.

A Fee-simple determinable upon a Contingency, is a Fee to all Intents, but not so durable as an absolute Fee. *Vaugh.* 273.

A Fee-simple determinable on a Contingency is a Fee.

Where a Man claims as Heir in Fee-simple to any Man by Discent, he must make himself Heir to him who was last seised actually of the Inheritance. *Co. Litt.* 11. b.

A Man who claims as Heir in Fee-simple must make himself Heir to him who was last seised.

If Lands are given to a Man and his Successors, this creates no Fee-simple in him for want of the Word *Heirs*; for it is that which makes the Fee-simple: But to a Corporation it must be (*Successors*). *Co. Litt.* 8. b.

To a Man and his Successors is no Fee-simple, but in case of a Corporation it is.

If a Man give Lands to a Man and his Heir in the singular Number, this is but an Estate for Life; for his Heir cannot take by Discent, because he is but one, and therefore shall take nothing: So where it is to one or his Heirs, or *hereditibus* without *suis*, it is only for Life because of the Uncertainty. *Co. Litt.* 8. b. So it is where it is to him and his Assigns. *Litt. sect.* 1.

To a Man and his Heir, is but for Life:

So to one or his Heirs, or his Heirs *sans (suis.)*

Or to his Assigns:

If a Man gives Lands to another and his Heirs males (without *Body*) this is an Intail by a Will, but a Fee by a Deed. *Hob.* 32. *Litt. sect.* 31. *Co. Litt.* 27. a. the Law supplying the Words (*of his Body*) to make it an Estate-Tail by a Will. *Litt. Rep.* 6.

To a Man and his Heirs males.

How it is in a Will, and how in a Deed.

A Feoff.

To the Use of a Man and his Heirs males (without Body) is a Fee-simple.

by Deed, and shall not have any other Construction; and an Estate-Tail it cannot be, because here is no Body from whom this Heir male shall come. *Cro. El. 478. pl. 7. 40. Litt. sect. 31.* But otherwise it is in Wills. 3 *Lev. 214.*

To a Man and his Heirs females (without Body) is a Fee.

A descendible Estate for Life, what.

Where in a Will the Words, and for want of Heirs of him, make an Estate-Tail.

By a Devise of all my Tenant-right Estate, what passeth.

All the rest of my Estate, in a Will, make a Fee-simple.

A Remainder cannot be limited upon an Estate in Fee.

To B. and his Heirs, and for want of Issue of his Body, Remainder over, held to be an Estate-Tail.

this Case, that only an Estate-Tail passed to the Son. But *Quere de hoc*; for had it been in the Case of a Devise, then it would have been an Estate-Tail; but being in the Case of a Conveyance at the Common Law, it seems to be otherwise. See 5 *Mod. 266, 267, &c.*

Whether a base Fee devisable.
32 *H. 8. rap. 1.*

A Man cannot make a Grant of an Inheritance to commence at his Death, and leave a particular Estate in himself.

A Feoffment in Fee to the Use of a Man and his Heirs male (without Body) this is a Fee, and tho' it be by way of Use, it differs not from other Gifts

A Gift to one and his Heirs females; this is a Fee-simple, because it is not limited of what Body the Heir shall be. *Litt. sect. 31.*

An Estate made to one and his Heirs during the Life of J. S. is but an Estate for Life, upon which a Remainder may depend by the Common Law. 1 *Rep. 140. b. See Postea.*

A Devise to A. for Life, and to his Heirs, and for want of Heirs of him to B. this is an Estate-Tail in A. because the Words, for want of Heirs of him, is for want of Heirs of his Body. 3 *Lev. 70, 71.*

By a Devise of all my Tenant-right Estate, a Fee-simple passeth. 2 *Lev. 91.*

Where in a Will are the Words, all the rest of my Estate, they carry a Fee-simple, if the Devisor had a Fee-simple therein. *Show. 348.*

A Remainder cannot be limited upon a Estate in Fee, because a Fee-simple is an absolute and clear Estate, and nothing can come after it. *Willion and Lord Berkley. 1 Plow.*

A Man makes a Feoffment to the Use of himself for Life, and after his Decease to the Use of his Son B. and his Heirs for ever, and for Default of Issue of the Body of his Son, to the Use of the right Heirs of the Feoffor for ever: It was adjudged in

A Rent-Charge is granted to A. and his Heirs during the Life of B. Two Judges against two held, that this base Fee simple was devisable by A. by 32 *H. 8. cap. 1. sect. 1. Cro. El. 804. pl. 5.*

Where one is seised in Fee, he cannot by any Matter in Fact give away the Inheritance to commence after his Death, and so leave a particular Estate in himself; but perhaps it may be done by matter of Record. *Cro. Eliz. 29. pl. 1. Hob. 171. Cro. Jac. 376.*

Felo de se.

See { Deodand.
Forfeiture.

A Felo de se is one who lays violent hands upon himself, and is the Occasion of his own untimely Death.

A Felo de se, what.

A Coroner's Inquest may be traversed by an Executor upon the finding of a *Felo de se*, but cannot be traversed upon a *Fugam fecit*. 2 Lev. 152.

A Coroner's Inquest traversable, and how.

Goods of a *Felo de se* are forfeited before Inquisition, viz. immediately upon committing of the Fact. 1 Lev. 8.

Goods forfeited before Inquisition.

The Reason that the King shall have the Goods of a *Felo de se*, as well Leases as others, is, because of the Loss of a Subject, and for a Breach of the Peace. Dame Hales's Case, 1 Plow. 261.

Why the King shall have the Goods of a *Felo de se*.

The Goods of a *Felo de se* cannot be claimed by Prescription, nor are forfeited, until found of Record: Justices of Oyer and Terminer, and all others who have Power to enquire of Felonies (in case that they be so secretly buried that the Coroner cannot have the View) may take a Presentment of this, for it is Felony; and this shall entitle the King to the Goods. 5 Rep. 110.

Goods of a *Felo de se* cannot be claimed by Prescription.

Justices may take a Presentment of the Felony.

Deodands are Goods which occasion the Death of Man by Misadventure, and are not forfeited until found of Record, and cannot be claimed by Prescription: And the Jury, who find the Death by such Misadventure, ought to find and appraise the Deodands also. *Omnia que movent ad mortem sunt Deodanda*. 5 Rep. 110. b.

Deodands, what.

Felo de se is no Murder within the Exception of Murder in a general Pardon. *Ibid*.

Is not Murder within the Exception of a general Pardon.

Altho' there can be no *Melius Inquirendum*, yet the Court may order an Indictment to be against the *Felo de se*; and if that be found, his Goods shall be forfeited.

Where his Goods shall be forfeited upon an Indictment.

Felon and Felony.

See { Accessory.
Burglary.
Clergy.
Hue and Cry.

Felony, what.

be without an Act done.

Felonies are by Common Law or Statute.

Four sorts of Felonies at Common Law.

If Death ensue on the doing of an unlawful Act, it is Felony.

not intended by him that did the Act, yet this is Felony. *Pasch. 23 Car. B. R.* For the Law will judge, that he that would do one unlawful Act, might have an Intention to do any other unlawful Act, which might be occasioned upon the doing thereof.

A Man committed for one Felony may be tried for another by the Justices of Gaol-Delivery.

Receiving stolen Goods, when Felony, when not.

24 *Car. B. R.* For he may receive them, and not know them to be stolen; but the comforting the Felon doth prove that he consented

Felony is a general Term which comprehends divers heinous Offences, for which the Offenders ought to suffer Death, and lose their Goods and Lands. Note, Felony cannot be without an Act done. Per Fineux, 13 H. 8. fol. 12. a.

Felonies are either by the Common Law or Statute Law.

Felonies by the Common Law are four.

1. Such as are committed against Life.
2. Such as are committed against Goods.
3. Such as are against the Habitation of a Man.
4. Such as are against the Process of publick Justice.

Where one is doing of an unlawful Act, and the Death of any Person ensueth upon the doing of that Act, though the Death of the Party was

If one be committed to the Gaol for one Felony, the Justices of the Gaol-delivery may enquire and try him for another Felony for which he was not committed, by Vertue of their Commission. By *Bacon Justice. Trin. 23 Car. B. R.*

The receiving only of stolen Goods, not knowing them to be so, is not Felony; but the receiving of them, and comforting the Felon, is Felony. *Pasch.*

to the Felony, and approved of the Act, and was a Countenancer of it.

If one be set upon in the Highway or other Place to be robbed, and he do cast away his Goods with an intent to save them from the Robber, and the Robber doth take them up, and carry them away, this is a Robbery and Felony committed to the Person of the Party robbed, although he took nothing from his Person. *Mich. 1649. B. S.* For the Party is robbed of his Goods, and the Thief knew them to be the Party's Goods, and came with an Intent to take them from him, had he not cast them away, and was the Cause that he cast them away.

How a Robbery may be committed without taking any Thing from the Person.

One ought not to be arrested upon Suspicion of Felony, except that there be good Cause shewed for the Ground of this Suspicion, *1649. B. S.* For every foolish Fancy or Conceit is no Ground of a Suspicion sufficient to arrest one for so great a Crime; but there must be *probabilis causa* for the Suspicion.

A Man ought not to be arrested on Suspicion of Felony without good Cause.

It is Felony to take a Bill from off the File after a Verdict in the Cause for which the Bill was sued forth. *Mich. 1649. B. S.* For this is imbezilling of a Record.

Felony to take a Bill off the File after Verdict.

The Robbery of a Servant of his Master's Money in his Custody, if it be in Presence of his Master, is robbing of the Master. *Mich. 1649. B. S.* For it is all one as if the Money were in his Master's Custody; for the Property was in the Master, although the Money was in the Hands of the Servant.

Robbery of a Servant in Presence of the Master, is a Robbery of the Master.

A Robbery shall be said to be done in that Hundred where the Party robbed is first set upon, although his Goods be taken from him in another Hundred. *Mich. 1649. B. S.* For there the Robbery was begun, and the Peace first broken, and the taking of the Goods is but a Continuation of the first Action.

If a Man be set upon in one Hundred, and robbed in another, the Robbery shall be said to be in the first Hundred.

A Hundred shall not be charged for a Robbery committed within it, upon the Statute of *Winchester*, in *crepusculo* or Twilight, that is, when it is neither perfect Day nor perfect Night; but if it be committed by Day-light, although it be before the rising of the Sun, or after the setting of it, the Hundred shall be charged. *21 Octob. 1650. B. S.* For in the Twilight the Felons cannot be well discovered.

Hundred not chargeable for a Robbery committed in the Twilight.

A Hundred shall not be charged for a Robbery committed within it in the Night, nor upon a Sunday, because Hue and Cry cannot be made in the Night, for that is a Time of Rest, *1650. B. S.* Also no Person ought to travel upon a Sunday.

Nor in the Night, or upon a Sunday.

If a Robbery be begun in the Day-light, but is not ended till dark Night, yet the Hundred where it was done is chargeable for it by the Statute of

A Robbery begun by Day, and ended in the Night, the Hundred is chargeable.

Winchester.

Winchester, 1650. B. S. For it is accounted one continued Act, and shall relate to the beginning of it.

No Clergy in Murder, Poisoning, House-breaking, robbing on the Highway, robbing of Churches Horse-stealing.
1 E. 6 r. 12. Stat. 10.
2 & 3 E. 6. cap. 33.

The attempting to kill, assault or strike a Privy-Counsellor in the Execution of his Office, is Felony without Clergy.
9 Anne.

The Statute of stabbing.
21 Jac. 1. cap. 8.

Taking away of Women without their Consent, is Felony without Clergy.
39 Eliz. r. 9.
Sec 4 & 5 P. & M. r. 8.

The Punishment of Felony, what.

Any one convicted of Murder or Poisoning, of Malice prepensed, House-breaking by Day or Night, any Person being in the House, (see for this in Title Burglary) for Robbery in or near the Highway, taking Goods out of a Church or Chapel, or feloniously stealing of Horses, Mares or Geldings, and being thereof convicted, shall not have the Privilege of his Clergy.

By an Act made 9 Anne, it is enacted, That if any Person shall unlawfully attempt to kill, or unlawfully assault, strike or wound any Person being one of the most Honourable Privy Council of Her Majesty, Her Heirs or Successors, in the Execution of his Office of Privy Counsellor in Council, or in any Committee of Council, the Persons so offending, being thereof convicted in due Form of Law, shall be, and are hereby declared to be Felons, and to suffer Death, as in Case of Felony, without Benefit of Clergy.

That every Person who shall stab or thrust any Person that hath not then a Weapon drawn, or not first stricken the Party, so as he shall die within six Months, although Malice prepensed cannot be proved, yet the Party offending being convicted shall suffer Death, as in case of wilful Murder, without Benefit of Clergy.

Exceptions out of it.

Not to extend to killing *se defendendo*, or in any other Manner than as aforesaid. Note, This was temporary and continued. 3 Car. cap. 4.

The taking away of Women against their Wills is made Felony without Clergy by the Statute of 39 Eliz. cap. 9.

The Punishment of Felony is,

First, To lose his Life.

Secondly, In the odious Manner of being hang'd between Heaven and Earth, as unworthy of both.

Thirdly, He shall lose his Blood as to his Ancestry; for his Blood is corrupted, and he hath neither Heir nor Posterity.

Fourthly, He loseth his Goods.

Fifthly, His Lands; and in such Case the King shall have *Annum, diem & vastum*, to the Intent that his Wife and Children be cast out of his House, his House pulled down, his Trees rooted up, his Meadows plowed up, and all that he had for his Comfort or Delight, destroyed. 4 Rep. 124.

Where

Felon and Felony.

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Where a Man kills another in his own Defence, or *per infortunium*, it is Felony; for which he forfeits his Goods. 5 Rep. 91. But he may sue out his Pardon of course.

Se defendendo and per infortunium, Felony; and forfeits Goods.

Bona & Catalla in exigendo posit is when any one is indicted or appealed of Felony, and he absents himself so long that he is outlawed; by this withdrawing of himself, (which is a Flight in Law) he forfeits all his Goods and Chattels which he had at the Time of the Exigent awarded, although he renders himself upon the Exigent, and be afterwards found Not guilty. 5 Rep. 110, 111.

Bona & Catalla in exigendo posit when and what forfeited.

Where a Person is imprisoned upon Suspicion of Felony, whoever takes his Goods before Conviction or Attainder shall forfeit the double Value by the Statute of 1 R. 3. cap. 3. Cro. El. 749. pl. 2.

No Felons Goods are to be seized till Conviction or Attainder.
1 R. 3. cap. 3.

It is Felony to personate a Bail, by the Statute of 21 Jac. cap. 26.

To personate Bail.
21 Jac. cap. 26.

So also to levy a Fine, suffer a Recovery, acknowledge a Statute, Recognizance or Judgment in the Name of another Person not being privy nor consenting thereunto.

So also to levy a Fine, suffer a Recovery, &c. without Privy or Consent.
21 Jac. 1. cap. 25.

It is Murder for the Mother to conceal the Death of her Bastard-Child.

Murder to conceal the Death of a Bastard-Child.
21 Jac. 1. cap. 27.

By the Statute of 1 Anne, Sess. 2. cap. 9. it is enacted, That it shall be lawful to prosecute any Person for buying stolen Goods, knowing them to be stolen, for a Misdemeanor, and to be punished by Fine and Imprisonment, although the Principal shall not be convicted of the said Felony: But if the Principal shall afterwards be acquitted, then the other Person shall be excused. See Title Principal and Accessory.

What Punishment for buying of stolen Goods.
Stat. 1 Anne, Sess. 2. cap. 9.

It is by a Statute made 10 & 11 W. 3. cap. 23. enacted, That every Person who shall apprehend any Person guilty of the Felonies (which see in Title Burglary in this Book) and shall prosecute them till Conviction, they shall then, without Fee or Reward have a Certificate thereof, under the Hand of the Judge before whom the same was tried, certifying the Place and Discoverer; and if any Dispute shall arise, the Judge before whom the Trial was, may appoint the Certificate into Shares to be divided amongst them; which Certificate may be but once assigned over, and whosoever shall have it, shall be discharged from all Parish and Ward-Offices where such Felony was committed.

The Reward for the apprehending of a Felon or Burglar.

Stat. 10 & 11 W. 3. cap. 23.

The Judge to appoint the Certificates.

To be discharged of all Parish Offices.

The Executors or Administrators of any Person kill'd, shall have such Certificate.

Instead of burning in the Hand, to be burnt in the left Cheek.

Hand, instead of being burnt in the Hand, shall be burnt in the left Cheek near the Nose, in open Court in the Judge's Presence.

5 Anne Sess. 2.

Punishment of Felons, &c. by an Act made 4 Georgii.
Stat. 4 Georgii, cap. 11.

liable to be whipt or burnt in the Hand, or have been ordered to any Workhouse, or who shall be therein on the said 20th Day of January: As also any Person or Persons who shall be hereafter convicted of Grand or Petit Larceny, or any felonious Stealing, within the Benefit of Clergy, it shall be lawful for the Court, before whom they are

Burning in the Hand and whipping changed to Transportation for seven Years.

All Persons convicted of capital Crimes, who shall obtain the King's Pardon of their Lives, and all Receivers and Buyers of stolen Goods, to be transported for the space of fourteen Years.

And if they return before the Term expired, they shall suffer Death.

Provido, that his Majesty may pardon such Transportation, and allow of their Return.

Owner or Proprietor such Sum of Money as shall be adjudged reasonable by any two Justices of the Peace residing within the Province where such Owner dwells.

Clause for the Punishment of Thief-Catchers.

Felon and Felony.

That in case any Person be slain in the endeavouring to apprehend such Felon, then his Executors or Administrators shall have such Certificate, without Fee or Reward.

That all Persons who shall be convicted of any Theft or Larceny, and shall have the Benefit of the Clergy allowed them, or ought to be burnt in the

Hand, instead of being burnt in the Hand, shall be burnt in the left Cheek near the Nose, in open Court in the Judge's Presence.

Note, This Clause was repealed by an Act made 5 Anne, Sess. 2.

But by an Act made 4 Georgii, cap. 11. it is enacted, That any Person or Persons, who have been convicted of any Offence within the Benefit of the Clergy, before the 20th of January, 1717. and are

liable to be whipt or burnt in the Hand, or have been ordered to any Workhouse, or who shall be therein on the said 20th Day of January: As also any Person or Persons who shall be hereafter convicted of Grand or Petit Larceny, or any felonious Stealing, within the Benefit of Clergy, it shall be lawful for the Court, before whom they are convicted, if they think fit, instead of ordering them to be burnt in the Hand, or whipped, to transport them, as soon as conveniently may be, to some of his Majesty's Colonies and Plantations in America, for the space of seven Years.

Also where any Persons have been convicted, or do now stand attainted of any Offences whatsoever, for which by Law Death ought to be inflicted on them; or where any Offender shall hereafter be excluded from the Benefit of Clergy, they having his Majesty's Pardon of their Lives; and also any Person or Persons convicted of receiving or buying stolen Goods, they knowing them to be so, shall be transported for the Term of fourteen Years.

And if any Offender or Offenders, that shall be so transported for seven or fourteen Years, shall return into any Part of Great Britain or Ireland, before the End of either of the said respective Terms, he or she so returning shall suffer Death.

Provido, That the King may at any Time pardon and dispense with any such Transportation, and allow of the Return of any such Offender or Offenders from America, he or they paying their

And whereas there are Persons who have secret Acquaintance with Felons, and make it their Business to help Persons to their stolen Goods, and by that

Felon and Felony.

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that Means gain Money of them, which is divided between them and the Felons, it is also enacted, That any such Person taking Money or Reward as aforesaid, unless such Persons do apprehend such Felons, and cause them to be tried and give Evidence against them, they shall be guilty of Felony, and suffer the Pains and Penalties thereof, according to the Nature of the Crime.

It is farther enacted, That from and after the 10th Day of *January* 1717, if any Person shall be in Prison for want of sufficient Bail, for the unlawful Exportation of Wool or Wool-Fels, and shall refuse to appear and plead to a Declaration or Information delivered to him, by the space of one Term, Judgment shall be entred against him by Default; and if he does not pay the Sum recovered against him for the said Offence, within three Months after, he shall be transported for seven Years, and suffer Death if he returns before the Expiration of that Time.

Unlawful Exporters of Wool, how to be punished.

Enacted, That all Pirates in *England* and *America* shall be utterly excluded from the Benefit of Clergy for robbing on the High and Open Seas.

Pirates excluded from Benefit of Clergy.

See the Statute of 3 & 4 *W. & M. cap. 9.* entitled, *An Act to take away Clergy from some Offenders, and to bring others to Punishment*: Also about Accessories and Buyers of stolen Goods, and Women convicted of Felony, where Men have their Clergy. See in Title Clergy.

Stat. 3 & 4 *W. & M. cap. 9.*

By an Act made 4 & 5 *W. & M. cap. 8.* it is enacted, That every Person who shall take one or more Thieves or Robbers, and prosecute him or them, until he or they shall be convicted of any Robbery committed in or upon any Highway, Passage, Field, or open Place, shall have from the Sheriff of the County where such Robbery and Conviction shall be made or done, without paying any Fee for every Person so convicted, the Sum of 40 *l.* within one Month after such Conviction and Demand, by tendering a Certificate to the Sheriff, under the Hand or Hands of the Judge or Justices, before whom such Felon or Felons shall be convicted: And if any Dispute shall arise touching the said Reward, the said Judge or Justices shall, by such Certificate, direct the Payment to be made amongst the Parties claiming the same, in such Share and Proportions, as to the said Judge or Justices shall seem just and reasonable.

40 *l.* to be paid by the Sheriff for the taking of an Highway-Man.

If any Dispute, how to be determined.

That such Sheriff making Default of Payment, shall forfeit to the Person or Persons double the Sum he ought to have paid, to be recovered by Action of Debt. See the Act at large.

The Penalty, if the Sheriff refuses Payment.

Also, see in the same Statute the Reward for Discoverers of Highway-Men: And a further Reward for the Apprehenders of Highway-Men.

A further Reward for the Discovery of Highway-Men.

To kill a Felon or a Burglar in the Defence of a Man's Person or House, is no Felony. *Hob. 96.*

No Felony to kill a Man in Defence of his Person or House.

See

Stealing Cloth from the Rack, or imbezilling the King's Stores, is Felony.

Felony to burn Stacks of Corn, Hay, Barns, &c. and to kill Horses, Sheep, and other Cattle in the Night-time.

22 & 23 Car. 2. cap. 7.

Makes no Corruption of Blood.

May be transported for seven Years; Felony to return.

Picking of Pockets is Felony without Clergy. 8 Eliz. cap. 4.

The severe Judgment of Pain fort & dure where a Prisoner refuses to plead.

It is Felony to steal a Cup they drank out of.

See an Act made 22 Car. 2. cap. 5. For the taking away the Benefit of Clergy from such as steal Cloth from the Rack, and from such as shall steal or imbezil his Majesty's Ammunition and Stores.

By an Act made 22 & 23 Car. 2. cap. 7. entitled, *An Act to prevent the malicious burning of Houses, Stacks of Corn and Hay, and killing or maiming of Cattle*, it is enacted, That where any Person shall in the Night-time maliciously and wilfully burn, or cause to be burned, any Ricks or Stacks of Corn, Hay, Barns, or other Buildings, or Kilns; or in the Night-time maliciously, unlawfully and willingly kill or destroy Horses, Sheep, or other Cattle of any Person, shall be adjudged a Felon, and suffer as in case of Felony.

This Act makes no Corruption of Blood, nor Disinheriton of the Heir.

The Party convicted may upon his Petition be transported for seven Years; but if he returns before the seven Years expired, it shall be Felony.

He that taketh away privily as a Pick-pocket, or otherwise, from the Person of another, Money or Goods, the Person who lost them not knowing thereof, shall be Felony without Clergy. 8 Eliz. cap. 4.

Where a Felon refuses to plead, the Judgment is, That he be remanded to Prison, and laid in some low dark Place, where he shall lie naked on the bare Earth without Litter or other Cloathing, except something to cover his privy Parts, and shall lie upon his Back with his Head and Feet uncovered, and one Arm drawn with a Cord to one Quarter of the Room, and the other Arm to the other; and the same Manner shall be done with his Legs, and there shall be laid upon his Body Iron and Stones, as much and more than he can bear, and he shall have the next Day three Morsels of Barley-Bread without Drink, and the next Day drink thrice of the Water next the Prison without Bread, & sic usque ad mortem. 2 Inst. 178.

Persons come into a Tavern to drink, and one stole a Cup in which they drank; this is not Burglary, but it is such a Felony as ousts him of the Benefit of his Clergy. Poph. 84.

Feoffment.

Feoffment.

Feoffment is where a Man gives Lands, Houses, or other corporeal Things, which are inheritable, to another in Fee-simple, and thereof delivers Livery, Seisin, and Possession, it is a Feoffment.

A Feoffment, what.

A feoffment made of Lands unto a Feme Covert is a good Feoffment in Law, until the Husband do disagree to it; but if he disagree, it is not good; for the Wife can neither give nor take without her Husband's Consent. *Hill. 23 Car. B. R.*

A Feoffment to a Feme Covert is good, if the Husband agree, otherwise not.

If Lessee for Years makes a Feoffment, the Lessor being upon the Land where Livery was made; this is a good Feoffment, the Law adjudging the Lessee in Possession, because he had Right thereunto by his Lease; and Livery ought always to be given of the Possession, and therefore he that hath the Possession must make the Livery; but if the Lessor makes the Livery, the Lessee being upon the Land, this Livery is void; for the Lessor cannot give the Possession when the Lessee is there. *Cro. El. 321, 322.*

Lessee for Years makes a Feoffment, Lessor being upon the Land when Livery was made, this is good.

The Word Feoffment implies Livery. *Hob. 262.*

The Word Feoffment implies Livery.

A Man pleads *Feoffavit, dedit, or dimisit*, for Life: This implies Livery; for without Livery, it is no Feoffment, Gift or Demise. *8 Rep. 82. b. Hob. 262. See Title Livery.*

The pleading of a Feoffment, Gift or Demise, for Life.

A Feoffment being a Common Law Conveyance, and executed by Livery, makes a Transmutation of Estate: But a Conveyance by the Statute of Uses, as a Covenant to stand seised, &c. makes only a Transmutation of Possession, and not of Estate: Because no Estate passes by those Conveyances, but only an Use. See *2 Lev. 77. 1 Vent. 378.*

A Feoffment makes a Transmutation of Estate.

Covenant to stand seised, a Transmutation of Possession.

If Lessee for Life, and the Reversioner in Fee, make a Feoffment in Fee by Deed, each gives his Estate, viz. The Lessee his by Livery, and the Fee from him in Remainder. *6 Rep. 15 b.*

Tenant for Life, Remainder in Fee, join in a Feoffment.

Feoffment.

Feoffment by Tenant in Tail, what passeth.

Tenant in Tail makes a Feoffment in Fee : The Inheritance of the Tail is not given to the Feoffee by the Feoffment, nor is he thereby Tenant in Tail : For none shall be Tenant in Tail, but he only who is comprehended in the Gift made by the Donor. *Plow. 562. a.* But it gives away all the Estate the Feoffor had. *Hob. 335.*

Baron and Feme in special Tail : Baron makes a Feoffment ; Feme survived, and died before Entry ; it is a Discontinuance.

Baron and Feme, Tenants in special Tail ; Baron makes a Feoffment and dies ; Feme survived, and before Entry died. This is a Discontinuance at the Common Law to the Issue, who ought to claim as Heir of their two Bodies, and not as Heir to one only : But if the Feme had entred, and re-continued the Estate-Tail, the Discontinuance had been purged, and the Estate-Tail re-vested in the Feme. *8 Rep. 71, 72. a.*

A Feoffment without Consideration, and says not to whose Use, it shall be to the Feoffor's Use.

A Feoffment to a Man and his Heirs, without Consideration, and says not to whose Use : This shall be to the Use of the Feoffor and his Heirs. So likewise it is in the case of a Fine or Recovery, where no Uses are declared.

Upon a Feoffment without Consideration, the Estate, but not the Use, passes.

Where a Man makes a Feoffment without any Consideration, by that the Estate and Possession passes, but not the Use ; that shall descend to his Heir. *1 Leon. 182. Case 256.*

A Feoffment and Livery *Habendum* after the Feoffor's Death, is void.

A Man makes a Feoffment to *J. S. Habendum* after his Death, and Livery is made ; this is void, being *in futuro*, and the Livery is also void. *Cro. Eliz. 354. pl. 27. 355.*

The Commendation of a Feoffment.

A Feoffment is the most ancient and necessary Conveyance, both for that it is solemn and publick, and therefore best to be remembered ; and also for that it clears all Disseisins, Abatements, Intrusions, and other wrongful or defeasible Estates, where the Entry of the Feoffor is lawful ; which neither Fine, Recovery, nor Bargain and Sale doth. *Co. Litt. 9. a.*

Fiction of Law.

Seisin of Conusee in a Fine is a meer Fiction.

The Seisin of the Conusee in a Fine is but a meer Fiction in Law, and an invented Form of Conveyance only : His Wife shall not be endowed, neither shall his Heir inherit.

The Law ought not to be satisfied with Fictions ; though they are necessary in some Cases.

The Law ought not to be satisfied with Fictions, where it may be really satisfied. *Pasch. 24 Car. 1. B. R.* Yet in some Cases Fictions of Law are necessary, and to be allowed.

Fieri Facias.

See { Execution.
Judgment.
Return of Writs.
Sheriff.

A Fi. Fa. is a Judicial Writ, and lies where a Man recovers Debts or Damages in any of the King's Courts; by which Writ the Sheriff is commanded that he levy the Debt and Damages of the Goods of the Defendant, &c. Note, This must be sued out within a Year and a Day after the Judgment, which if it be not, then the Judgment must be revived by a Sci. Fa. Note also, This Writ is given by the Statute of Westminster 2. 13 E. 1. cap. 18.

A Fi. Fa. what.

13 E. 1. cap. 18.

Where an Execution is sued out, and the Defendant dies before it is executed, it may be served upon the Defendant's Goods in the Hands of his Executor or Administrator. *Cro. Eliz.* 181. pl. 16.

How a Fi. Fa. may be executed after a Defendant's Death.

By a Fi. Fa. out of the Exchequer for the King's Debt, the Beasts of J. S. which were levant and couchant upon the Lands of the King's Debtor; were taken and sold as the Goods of the Debtor; this is naught; but they might have been distrained for the King's Debt. *Cro. Eliz.* 431. pl. 38.

Where Cattle upon the Land of the King's Debtor may be distrained, but not taken in Execution.

The Sheriff may sell the Goods upon a Fi. Fa. and take the Money; but he cannot take the Money upon a Ca. Sa. because that Writ doth not warrant him to do it. *Lutw.* 588, 589.

Sheriff may sell Goods upon a Fi. Fa. but cannot take the Money upon a Ca. Sa.

The Sheriff cannot deliver the Goods by him taken in Execution to the Plaintiff, in Satisfaction of his Debt: Because his Authority is to sell the Goods. *Lutw.* 589. *Cro. El.* 504. pl. 28.

Sheriff cannot deliver to the Plaintiff the Goods taken upon a Fi. Fa.

By the Statute of *Frauds and Perjuries*, the Sheriff must endorse the Day that the Fi. Fa. was delivered to him, for from that Day the Goods are bound: So that if another Fi. Fa. comes afterwards, or the Defendant dies afterwards, and before the Return, yet

Sheriff must endorse the Day on the Fi. Fa. when he received it. *Stat.* 29 Car. 2. cap. 7.

that

that first Writ shall be first executed and satisfied. But see *Mod.* 376, 377. seems to be otherwise.

The Clause of the Statute of 29 Car. 2. cap. 3. No Writ of *Fi. Fa.* or other Execution shall bind the Property of his Goods against whom such Writ of Execution is sued, but from the Time it shall be delivered to the Sheriff, Under-Sheriff or Coroners, to be executed; which said Officers, their Deputies and Agents, shall, upon the Receipt thereof, without Fee, endorse upon the Back thereof the Day of the Month and Year wherein he received the same. Statute of *Frauds and Perjuries*, 29 Car. 2. cap. 3.

How the Sheriff is to sell a Term.

Where upon a *Fi. Fa.* the Sheriff reciting the Defendant's Term, recites it falsely, and so sells it, the Sale is void; because there is no such Term. But notwithstanding this false Recital, if the Sheriff had sold all the Interest that the Defendant had in the Land, there the Sale had been good. 4 Rep. 74.

A general Recital, good.

How Restitution shall be of a Term taken by *Elegit*, and how when taken and sold upon a *Fi. Fa.*

The Sheriff reciting, that the Defendant had a Term of divers Years yet to come, sold it upon a *Fi. Fa.* and held good. *Ibid.*

A Term is delivered in Execution to the Plaintiff upon an *Elegit*, and then the *Elegit* is reversed; Restitution shall be of the Term: But in Case of a *Fi. Fa.* the Sale of the Term is good, and Restitution shall be only of the Money. *Cro. Jac.* 246.

Filing of Process, &c.

What a File is.

A File or Filace, whereupon Process and other Matters are filed, is commonly a piece of Cats-Guts twisted hard and dried, and is thrust through any Thing which is filed; and being then in the proper Office for that Purpose, it becomes a Record of the Court.

Affidavits not read in Court may not be filed till the Secondary has made his Report.

Affidavits which are not read in Court may not be filed there until the Secondary hath made his Report in the Cause, touching which such Affidavits were made; but if they be read in Court, they may presently be filed. *Trin.* 24 Car. B. R. For the Court takes no Notice of them until they be read in Court, or that they are taken Notice of by the Secondary upon Examination of the Matter referred.

Filing of Process, &c.

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An original Writ may be filed after Judgment given in the Cause, for which it is sued forth; if it were sued forth before the Judgment given, (*Trin.* 1650. 26 Junii, B. S.) else not.

An original Writ may be filed after Judgment.

It is now used, that if a Rule be made upon the reading of Affidavits in Court, the Client ought not to have the Affidavits out of Court, but they ought to be filed, that Copies may be taken of them, if either Party desire it.

If a Rule be made upon the reading the Affidavits, the Client ought not to have them out of Court, but they ought to be filed.

The Court will not compel the Plaintiff to file a *Venire facias* after a Verdict, if the *Venire* will make an Error; for if there be no *Venire*, that Defect is helped by the Statute of *Jeofails*; but if there be a *Venire*, and that *Venire* is erroneous, this is not helped by the Statute. *Trin.* 1651. B. S. And therefore the Party shall not be compelled to do a Thing indifferent to be done, or not to be done, to his own Prejudice.

If the *Venire facias* will make an Error, the Plaintiff need not file it after Verdict.

The filing of any Process, or other Thing in Court makes it a Record of the Court.

Filing of Process, &c. makes it a Record.

A *Capias* that is duly sued forth and returned, ought to be filed. For it is the filing of it which makes it a Record of the Court out of which it is sued, and wherein it is returnable.

When a *Capias* may be filed.

A Declaration may be filed in the Office, after a Writ of Error is brought. And so may a Warrant of Attorney, unless there be a Rule of Court to the contrary; for the Defendant is at no Prejudice by the filing of them.

When a Declaration or Warrant of Attorney may be filed after Error.

What Affidavits must be filed before they are read, being taken by Commissioners, by 29 Car. 2. cap. 5. See Title Affidavits.

What Affidavits must be filed before read.
29 Car. 2. cap. 5.

Fines.

See { Baron and Feme. } Pleas.
 { Conveyance. } Recovery.
 { Inrolment. } Uses.

Fines, what.
 See 18 E. 1. Stat. 4.
 27 E. 1. cap. 1.

FINIS dicitur Finalis Concordia quia finem
 litibus imponit. Co. Litt. 262. a. Litt. Sect.
 441.

If Conuzee pay Money
 to the Conusor, and no
 Use declared, the Law
 will construe the Fine to
 be to the Use of the Co-
 nuzee : Otherwise if no
 Money be paid.

If the Conusee of a Fine levied of Lands, do
 pay Money unto the Conusor of the Fine at the
 Time of the Fine levied, and there is no Use de-
 clared to lead the Use of the Fine levied of these
 Lands ; the Law will construe the Fine to be levied
 of these Lands, to the Use of the Conusee, to whom
 the Fine is levied ; but if there be no Money paid by the Conusee,
 nor any Use declared, the Fine shall enure to the Use of the Conusor
 that levied the Fine. *Pasch. 23 Car. B. R.* For nothing appears where-
 by it can be supposed that the Parties had any Intention the Estate in
 the Lands should be altered by the Fine, but that the Fine was levied
 for the Corroboration of the Title of the Conusor ; but where Money
 is paid, the Law will intend that he that paid it is to have Benefit by
 the Fine.

A Fine levied by an
 Infant vacated upon In-
 spection.

A Fine levied by an Infant vacated upon In-
 spection on a Writ of Error. 3 *Lev.* 36.

Fine pleaded with
 Warranty as an Estoppel.

Pleading of a Fine with Warranty as an Estop-
 pel by reason of the Warranty. 1 *Lutw.* 852, 853.

Parties and Privies
 are concluded to say,
partes ad finem, &c.

Parties or Privies are concluded to say, *partes*
ad finem nil habuerunt, &c. by the Statute of 4 H. 7.
 but a Stranger may plead this Plea. *Hob.* 333.
 1 *Leon.* 82, 83, 84.

If when an Estate is
 put to a Right, there
 comes a Fine and Non-
 claim, it is a perpetual
 Bar.

When an Estate is put to a Right, and then
 comes a Fine and Non-claim, it is a perpetual Bar.
Carter 82. and 163, 164.

A Fine sur Cognizance de droit come ceo, &c. is a Feoffment upon Record of the Lands comprised in the Fine, and doth imply a Livery and Seisin of those Lands, *Hill. 1649. 26 Jan. B. S.* to pass the Estate out of the Conusor to the Conusee; but if another Person were in by Tort, it will not amount to an Entry, as a Feoffment will to purge that Tort.

A Fine sur Cognizance, &c. is a Feoffment on Record, and implies Livery and Seisin.

One might formerly have declared the Use of a Fine by Parol; but I think at this Day it cannot by reason of the Statute of *Frauds and Perjuries*.

The Use of a Fine might formerly have been declared by Parol.

There are five Parts of a Fine:

The several Parts of a Fine.

First, An original Writ.

Secondly, *Licentia concordandi*.

Thirdly, The Concord.

Fourthly, The Note of the Fine.

Fifthly, *Pes Finis*. See 5 Rep. 38.

They must be levied by original Writ. Stat. 18 E. 1. Stat. 4.

They must be levied by Original. 18 E. 1. Stat. 4.

Upon the Statute of 7 H. 7. cap. 24. it hath been much disputed, Whether a Fine shall bar an Heir in Tail? Then comes the Statute of 32 H. 8. c. 36. and enacts, That all Fines with Proclamations by any Person of full Age, of any Manors, Lands, Tenements or Hereditaments in any wise entailed to the Person levying the same, or any of the Ancestors of the same Person, in Possession, Reversion or Remainder, or in Use, shall immediately after the Fine levied, ingrossed, and Proclamations made, be adjudged, accepted, deemed and taken to be a sufficient Bar for ever against the said Persons and their Heirs claiming the same, only by Force of such Intail, and against all other Persons claiming only to their Use, or to the Use of any Heir of the Bodies of them.

Statute of Fines. 7 H. 7. cap. 24. See Ch. Justice Jones 237. See Raymond 260. A Fine levied by Tenant in Tail shall be a Bar to the Heir of his Body. 32 H. 8. cap. 36.

In the same Statute it is enacted, That a Fine levied by the Wife of the Inheritance of her late Husband, shall be void according to 11 H. 7. c. 20. sect. 2.

A Fine levied by the Wife of the Husband's Inheritance.

There were two Villages, W. and S. in the Parish of S. a Fine was levied of Lands in the Parish of S. and held that Lands in W. did not pass thereby, unless W. had been an Hamlet of S. and the Fine had been levied of Lands in the Parish of S. *Cro. Jac. 120. pl. 3.*

Where are two Villages in a Parish, and a Fine levied of Land in the Parish only, how to be.

The Record remaining with the *Custos Brevium* was amended, and made according to the Record remaining with the Chirographer: Because (says the Book) the Justices took it, that the Note remaining with the Chirographer, *est principale Recordum*. 3 Leon. Case 234.

How a Fine was amended.

What Deeds of Declaration of Uses shall be good, *non obstante* the Statute of Frauds, and so of Trusts.
4 & 5 Annæ.

What Entry to avoid a Fine, or Statute of Limitation.

4 & 5 Annæ
21 Jac. cap. 16.

Baron and Feme (the Feme within Age) levy a Fine, the Fine reversed as to both.

Fine and Non-claim binds a Trust.

Where a Deed recited shall be good Evidence to prove the Uses of a Fine.

Husband and Wife Tenants in special Tail: The Husband levies a Fine, it bars his Issue.

remainders depending upon it; and to all the Consequences of Benefit to herself and others, so long as she lives, as if the Fine had not been levied. *Hob.* 257, 259.

Fine levied by Issue in Tail.

Tenant in Tail hath two Sons, the eldest levies a Fine in his Father's Life, dies without Issue, it bars not the second.

A Fine by Tenant in Tail not seised of the intailed Lands shall bind his Issues.

But not a Remainder Man.

bind the next in Remainder in Tail. *Cro. Car.* 434, 435. nor his next Brother. *Latch* 66.

Fines.

What Deeds of Declaration of Uses or Trusts of any Fines or Recoveries shall be good, by the Statute of 4 & 5 Annæ, notwithstanding the Statute of Frauds. See Title Uses.

What Entry or Claim, and Prosecution thereupon, shall be sufficient to void any Fine, or be an Entry within the Statute of Limitations, 21 Jac. cap. 16. See Title Entry.

Baron and Feme (the Feme within Age) levy a Fine, and upon Inspection the Wife was adjudged to be within Age; and it was adjudged, that *Finis præd.* (both as to Baron and Feme) *revocetur.* 1 Leon. 116, 117, 118. *Case* 158.

A Fine and Non-claim binds a Trust, and Equity. *Chanc. Rep.* 268, 278. See Title Trust.

Where a Deed recites a Deed of the Limitation of the Use of a Fine. *Per Cur.* The bare Recital was not Evidence; but if it could be proved that such Deed had been, and lost, it would do if recited in another. *Mod. Cases* 45.

Husband and Wife, Tenants in special Tail: The Husband levies a Fine, this bars the Intail to the Issue totally. But it remains in Right to the Wife as to herself, and to all the Estates and Re-

When Issue in Tail levies a Fine with Proclamations in the Life of the Tenant in Tail to another, and afterwards Tenant in Tail dies, this shall bind the Issue in Tail and his Issue. 3 Rep. 51.

Tenant in Tail hath Issue two Sons; the eldest levies a Fine in the Life of his Father, and dies without Issue; then the Father dies; the second Son shall inherit as Heir to the Father. *Latch* 85. See *Mackwilliam's Case* in *Hob.*

If Tenant in Tail levies a Fine, altho' he was not seised at the Time when levied by Force of the Intail, yet this Fine shall bind the Issues. 2 Leon. *Case* 191. *Fol.* 158.

But where such Tenant levies such Fine in the Life of Tenant in Tail, and dies without Issue in the Life of the Tenant in Tail, there it shall not

Where one who hath a Freehold in Possession levies a Fine, *Come ceo*, &c. this enures as a Feoffment with Livery on Record; but where he hath but a Reversion or Remainder, it enures only as a Grant thereof without Tort to the Possession of an Estranger who hath the Freehold, but makes only a Discontinuance. *Moor, Fol. 629.*

Where a Fine is a Feoffment with Livery, and where only a Discontinuance.

A Fine levied by Tenant for Years, or Life, or Copyholder, who continues the Possession, and pays the Rents, shall not bind the Lessor, though after five Years Non-claim; also the Lessor shall have five Years Non-claim after the Determination of their Estates. *3 Rep. 77, 78, &c.* Tenant for Life, Remainder in Tail, levies a Fine, he in Remainder in Tail shall have five Years after the Death of Tenant for Life. *Litt. Rep. 217.*

Fine levied by Tenant for Life, Years, or Copyholder.

For Fines and Non-claims, see the Case of Fines. *3 Rep. from 44. to 91. See Show. Rep. 40, 41, 74.*

For Fines and Non-claims.

The Husband levies a Fine with Proclamations, and dies, the five Years Non-claim pass after his Death; this bars the Wife of her Dower. *2 Rep. 93. a.*

Fine and Non-claim bar a Wife of Dower.

A Feme Covert levies a Fine, this shall bar her and her Heirs, if her Husband doth not enter, and avoid it. *10 Rep. 43. a. 7 Rep. 8. a. b. Hob. 225.*

Feme Covert levies a Fine, how to be avoided.

An Infant levies a Fine, and declares the Uses of it, such Declaration is good. *2 Leon. Case 193.*

An Infant levies a Fine, he may declare the Uses of it.

Where a Claim is to be of an Equity within five Years after the levying of the Fine, the Claim must be by *Subpœna* and not by Entry. *Chanc. Rep. 279.*

How a Fine is to be avoided in Equity.

It may be levied of any thing whereof a *Præcipe quod reddat* lies, as of Lands, Rent, &c. or of any thing whereof a *Præcipe quod faciat* lies as to Customs, Services, &c. or whereof a *Præcipe quod permittat* lies, or whereof a *Præcipe quod teneat* lies. *2 Inst. 513.*

Of what Hereditaments a Fine may be levied.

Of Fines there are several sorts, as *Sur consuſance de droit come ceo*, &c. and also *Sur Grant* and *Render*, or *Sur Release*, or *Sur Confirmation*, or *Sur Surrender*; of all which and their several Natures, see *2 Inst. 513.*

Of the several sorts of Fines, and their several Natures.

Whether the Uses of a Fine *Sur Grant* and *Render* may be declared by Deed contrary to what they are in the Fine. *Moor, Case 138. 249.*

What Uses may be upon a Fine *sur Grant* and *Render*.

What Conditions are bound by Fines and Recoveries, and what not. See Title *Recovery*; and *2 Rep. 73, 74. &c.*

What Conditions are bound by Fines and Recoveries.

A Fine or Recovery cannot destroy an Estate executory, which depends upon Contingencies: Because it is uncertain whether there shall ever be an Estate *in esse* for the Fine to work upon; but it will destroy an Estate in Remainder, because that is an Estate vested.

A Fine or Recovery cannot destroy an Executory Estate; but a Remainder it shall.

Where an Entry to avoid a Fine is attach'd in one of full Age, it shall run on notwithstanding Infancy.

A Fine and no Writ of Error brought in five Years is a Bar to any to be brought afterwards.
4 D. 7. c. 24.

A reputed Manor will not pass in a Fine for a Manor.

Where a Fine shall bar a Trust.

Where Tenant in Tail, Reversion or Remainder to the Crown, levies a Fine, it shall bar the Issue, and where not.

where the Reversion is in the Crown, nor the Remainder by the King's Procurement, and not by the Gift of a common Person to the Crown. See 2 Rep. 15. b. 16. a. 8 Rep. 78. a.

How to plead a Fine or Recovery to Uses.

Case is) was levied to such Uses; and in Evidence you must produce the Deeds to prove the Uses. 8 W. B. R.

Directions for it.

Where the Uses are declared by a Deed before the Fine.

May be levied in Ancient Demesne.

See Title Error, and Stat. 10 & 11 U. c. 14.

A Rent may be by a Devise or Fine, without Attornment.

Disseisor levies a Fine with Proclamations; Disseisor after three Years, and within five Years, dies, his Heir within Age, who after the five Years expired comes of full Age, and within a Year afterwards enters; and adjudged not congeable: Because it being attach'd in the Life of the Disseisor, and he not entering, it shall, though there be Infancy, still run on till the five Years are past, and Infancy shall not hinder it. 1 Plow. from 355, to 376.

A fine levied, and five Years past without bringing of a Writ of Error, is a good Bar, by the Word *Actions*, within the second Saving of the Statute of 4 H. 7. cap. 24. Cro Jac. 333.

Where a Fine is levied of a Manor, nothing but a Manor shall pass, and not a Manor in Reputation. Cro. El. 707. pl. 29. 708.

A fine of *Cestuy que trust* shall bar and transfer a Trust, as it should an Estate at Law, if it were upon a good Consideration. Chanc. Rep. 49. See Title Trust.

Tenant in Tail, Remainder to the King, (not said Reversion) levies a Fine, hath Issue and dies, the Issue is barr'd, says Moor, Case 258. 3 Leon. Case 84. 4 Leon. Case 108. Hob. 332, 333. But Co. Litt. 372. b. 373. a. it shall not bar the Issue in Tail

where the Reversion is in the Crown, nor the Remainder by the King's Procurement, and not by the Gift of a common Person to the Crown. See 2 Rep. 15. b. 16. a. 8 Rep. 78. a.

In the pleading of a Fine or Recovery to Uses, you need not set forth the Deeds which lead the Uses, but to say, that the Fine or Recovery (as your Case is) was levied to such Uses; and in Evidence you must produce the Deeds to prove the Uses. 8 W. B. R.

Several good Directions how to plead a Fine. Lutw. 1621, 2623. 2 Lev. 31.

Where the Uses of a Fine are declared by a Deed before the Fine, there no other Uses can be declared by Parol. Ram and Thacker. 9 W. B. R. Nor upon a Recovery.

A fine may be levied of Lands in Ancient Demesne; those Fines make a Discontinuance, but do not bar by the Statute of Non-claim. Lutw. 781, 782, 778, 961.

See Title Error, for the Limitation of the Time for bringing of Writs of Error upon Fines. per Stat. 10 & 11 W. cap. 14. which appoints twenty Years.

By a Devise or Fine to Uses, a Rent may pass without the Assent or Attornment of the Tenant; because not necessary to these Attornments. 2 Lev. 240.

Tenant for Ninety-nine Years, if he so long lives, levies a Fine, and dies; he in Reversion shall have other five Years after his Death to avoid the Fine. 2 *Lev.* 52.

Where the Reversioner shall have five Years after the Tenant's Death.

Tenant in Tail bargains and sells in Fee, the Bargainee levies a Fine; the five Years pass in the Life of the Bargainor; this shall not bar the Issue in Tail, but he shall have five Years to claim after his Father's Death; but if Tenant in Tail had been disseised, and the Disseisor had levied a Fine, and the five Years had passed without Claim, that shall bind his Issue. *Cro. Eliz.* 896. pl. 16.

Tenant in Tail bargains and sells, Bargainee levies a Fine; five Years pass in the Bargainor's Life time. the Issue shall have five Years after his Death: Otherwise in case of a Disseisin.

A Man devises to his Wife for Life, Remainder to his Son when he shall come to twenty-five Years of Age; he, before he came to twenty-five, and had no Remainder in him, levies a Fine, and dies at twenty-five; then the Wife died; this bars the Issue, though at the Time of the Fine he was not Tenant in Tail, but a Person to whom the Land was intailed. *Cro. El.* 610. pl. 16. 611.

A Fine levied by one not seised of the Estate. Tail shall bind his Issue.

So it is where Tenant in Tail makes a Feoffment, and disseises the Feoffee, and levies a Fine; this Fine shall bar the Issue in Tail, and shall bind the Right of the Intail that was in him who levied the Fine. *Ibid.*

So where Tenant in Tail makes a Feoffment, and disseises his Feoffee, and then levies a Fine.

Tenant in Tail to him and the Heirs males of his Body hath three Sons; the second levies a Fine in the Life of the Father; the Father dies, the eldest is not barr'd; but if the eldest dies without Issue, the Third is barr'd. *Hob.* 333, 334.

Where the Fine of the middle Brother bars the younger, not the elder.

living the Second,

A Fine levied of a Tenement is naught. 1 *Leon.* 188. *Case* 265.

Cannot be levied of a Tenement.

A Fine upon a Release cannot be intended to be to any other Use, but to him to whom it is levied. 3 *Leon.* *Case* 61.

To what Uses a Fine upon a Release can be.

Fines for Offences.

See { Amercements.
Courts.
Leets.

Fines for Offences.

Fine for an Offence, is a Sum of Money, which a Man is to pay to the King for any Contempt or Offence against the Government.

The Court may fine a Man for beating any of the Court or the Jury.

The Court may set a Fine upon one that shall beat any of the Court, or the Jury impanelled to try a Cause there, or the Procurers. 27 Aff. 63. 44. 32 H. 6. f. 40.

May fine one of their Officers for neglect of due Attendance.

If an Officer of the Court do not give his due Attendance upon the Court, as his Place requires; the Court may set a Fine upon him for his Neglect.

Trin. 22 Car. B. R. For the Court hath the Government of such Officers, and is to punish Misdemeanors.

For the Court hath the Government of such Officers, and is to punish Misdemeanors.

Or any reported by the Master to be guilty of a Contempt.

Where a Person is reported by the Master to be guilty of a Contempt to the Court, the Court may fine him as they please.

Or a Clerk of the Peace who returns an Indictment not good in Matter of Form.

This Court may set a Fine upon the Clerk of the Peace, who returns an Indictment in this Court, upon a *Certiorari* directed to remove the Indictment into this Court, if the Indictment be not good in

the matter of Form. *Trin. 22 Car. B. R.* For it shall be intended that it was his Negligence that the Indictment was not well drawn; for it shall not be presumed that he can be ignorant in the Form of drawing Indictments, and he is an Officer accountable to this Court for Things done in relation to his Office.

The Court cannot fine a Sheriff out of his Office.

The Court cannot set a Fine upon a Sheriff that is out of his Office. *Mich. 22 Car. B. R.* For then he ceases to be an Officer of the Court, and consequently the Court cannot punish him as their Officer.

B. R. may fine Justices of the Peace for proceeding on an Indictment after a *Certiorari* delivered to them.

If Justices of Peace do proceed upon an Indictment after a *Certiorari* out of this Court is delivered unto them, to remove the Indictment into this Court, this Court may set a Fine upon them for their

Fines for Offences.

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their Contempt to this Court, in not obeying the Process thereof *Hill. 23 Car. B. R.* This was done heretofore in the Case of Sir *John Sedley* and Sir *Tho. Stile*, two Justices of the Peace of the County of *Kent*.

If a *Habeas Corpus* do issue out of this Court, and the Party to whom it is directed do make an insufficient Return of it, this Court may set a Fine upon the Party for making this insufficient Return. *Pasch. 24 Car. B. R.* For it shall be accounted his Negligence or Falsity that makes not a good Return.

Also for the insufficient Return of a *Habeas Corpus*.

If Part of a Fine that is set upon one that is convicted upon an Indictment or Information for an Offence done by him contrary to a Statute, do belong to a Subject, as it may if the Statute do so direct, all the Fine set upon the Party ought not to be estreated into the Exchequer. *Pasch. 24 Car. B. R.* But the King's Part only ought to be estreated; for if it should, this would put the Informer to Trouble to get his Part.

If Part of a Fine belong to a Subject, the whole Fine ought not to be estreated into the Exchequer.

A Fine of twenty Nobles was set upon one for bringing an Attaint against a Jury, after the Jury had been formerly acquitted. *Hill. 1649. B. S. 4 Feb. B. S.* For false Vexation of the Party.

A Man who brings an Attaint against a Jury after they had been acquitted, may be fined.

The Court may fine a Man for an Offence committed in Court in their View, or by the Confession of the Party, recorded in Court.

The Court may fine for an Offence committed in their View, or by the Confession of the Party.

Fines assessed in Court by Judgment upon an Information cannot be afterwards qualified or mitigated. *Cro. Car. 251. pl. 1.*

Fines assess'd in Court upon an Information cannot be mitigated.

A By-Law to levy a Penalty by Distress only, is good; but to levy by Distress and Sale of Goods, is naught. *3 Lev. 281.*

A By-Law to levy by Distress, is good; but not to sell.

A Fine set upon one which is voidable, is not void absolutely, but continues to be a good Fine until it be avoided by the Plea of the Party fined; otherwise it is in the Case of a Fine that is void.

A voidable Fine set; how it is to be.

All *Capiatur* Fines are now taken away, by the Statute of *4 & 5 W. & M. cap. 12.* except where a Defendant pleads *Non est factum*, and it is found against him; for that is *Causa omissus* out of the Act.

What *Capiatur* are taken away per *4 & 5 W. & M. c. 12.*

If a Juror at the Bar will not swear, he may be fined. *2 H. 6. 12. b.*

A Juror who will not swear, may be fined.

The Steward of a Leet may impose a Fine upon one who is chosen Constable, and refuses to be sworn: So also he may upon a Tything-man, who refuses to make a Presentment in a Leet.

Where the Steward of a Leet may fine a Constable or Tything-man.

If one of the Jury in a Leet departs without giving of his Verdict, the Steward may fine him. *Co. 8 Rep. 38. a. b.*

Where a Juror in a Leet.

Fines for Offences.

Imprisonment is incident to every Fine.

To every Fine Imprisonment is incident, and when the Judgment is *quod defendens capiatur*, that is, *Capiatur quousque finem fecerit*. Co. 8 Rep. 59. b. Cro. Car. 340. Co. Litt. 126. b.

Where a Post-Fine must be sued for.

The Grantee of a Post-Fine cannot distrein for it, but it must be sued for in the Exchequer. 3 Leon. Case 319.

The Fine shall be satisfied out of the Delinquent's Lands, though he be in Prison for it.

Where a Person is fined to the King, notwithstanding the Body continues in Prison, the King shall be satisfied the Fine out of the Profits of the Delinquent's Estate. 4 Leon. Case 393.

So where a Feme Covert is fined, and goes to Prison, her Husband's Lands shall pay it.

If a Feme Covert be fined, though she goes to Prison and stays there, her Husband's Lands shall be liable to pay the Fine. *Ibid.*

First-Fruits and Tenths.

What they are.
26 H. 8. c. 3. Sect. 2.

First-Fruits are by the Statute of 26 H. 8. c. 3. Sect. 2. appointed to be one Year's Profits to be paid for every Archbishoprick, Bishoprick, Abbacy, Monastery, Priory, College, Hospital, Archdeaconry, Deanery, Provostship, Prebend, Parsonage, Vicarage, Free Chapel, and other Dignity, Benefice, Office or Promotion Spiritual in England, or elsewhere, within any of the King's Dominions, whereunto any Person shall be nominated, elected, presented, presented, collated or appointed; all which, together with the Tenth-part of all the Revenues and Profits belonging to all the said Spiritual Promotions, are by the said Statute given to the said King, his Heirs and Successors.

The Queen gave all those for the Augmentation of poor Benefices.
2 & 3 Annæ, cap. 11.

The Matter standing thus, The Queen's Majesty, out of her most religious and tender Concern for the Church, was pleased not only to remit the Arrears of her Tenths, but also that the whole Revenue of First-Fruits and Tenths might be settled for a perpetual Augmentation of the Maintenance of her Clergy in Places where they are not already sufficiently provided for: All which, with the Manner of it, and how to be distributed, was passed into a Law by the Statute of 2 & 3 Anna, cap. 11.

A Supplementary Act:
5 Annæ.

Afterwards the last abovementioned Act being found to be defective, a Supplementary Act was made Anno 5 Anna, entituled, *An Act for discharging of small Livings from their First-Fruits and Tenths, and all Arrears thereof*; which see at large.

First-Fruits and Tenths.

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Note. There is a Clause, that this Act shall be taken and accepted in all Courts as a Publick Act.

Declared to be a publick Act.

See another Act made 6 Anna, entituled, *An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings not exceeding fifty Pounds per Ann. as also for discharging of Livings of that Value from the Payment of First-Fruits, and for allowing Time to Archbishops and Bishops, and other Dignitaries, for Payment of their First-Fruits.*

Another Act made afterwards. 6 Anna.

Flotsam.

See Wreck.

It is when a Ship is sunk or perishes, and the Goods are floating upon the Sea. 5 Rep. 106. b.

Flotsam, what.

The Law gives a Year and a Day for the Proprietor to claim Flotsam. 1 Keb. 657. pl. 39.

When to be claimed.

Forcible Entry.

See Indictment.

Forcible Entry is where any Person or Persons with strong Hand do make Entries into Lands, Tenements, or other Possessions, and hold them with Force; and also those who make Insurrections, Riots, Routs and Assemblies in Disturbance of the Peace of the Law, or in Affray of the People.

A Forcible Entry, what. 8 H. 6. cap. 9.

The

The Possession of the Tenant is the Possession of the Lessor.

Where a Man hath Possession for three Years quietly, he may hold with Force; how to be intended.

An Indictment reversed for not saying, *ad tunc existet*.

3 H. 6. c. 9.

It lies for a Forcible Entry in Tithes and Rent.

The Lord of the Soil cannot be indicted for a Forcible Entry into, and Forcible Detainer in a Common, and why.

of it with Force against a Commoner; for the Statute says, *ubi ingressus non datur per legem*. Cro. Car. 486.

Et disseisne for *vel disseisne*, and quash'd.

No Restitution after three Years quiet Possession of his Estate not ended.

13 Eliz. cap. 11. sect. 3.

Forcible Entry.

The Possession of the Termor was the Possession of the Lessor; and when at the End of the Term he kept it against his Landlord, it was a Forcible Detainer: And where the Statute says, That where one hath had Possession for three Years quietly, he might hold the Possession with Force; that is intended where the Estate is continued. Cro. Jac. 199. pl. 28.

Indictment upon the Statute of 8 H. cap. 9. it is said, *Vi & armis* he entred into such Lands *existet liberum tenement*. J. B. and expelled and amoved him, and said not *ad tunc existet*. and for this Cause reversed. Cro. Jac. 214. Latch 109.

An Indictment of Forcible Entry in Tithes lies; so also for Rent. Cro. Car. 201. pl. 3.

The Lord of the Soil was committed by a Justice of Peace for holding the Common with Force, which was ill; because the Common being his own Ground, he cannot be indicted nor committed for entring into his own Land with Force, or holding

Exception taken to an Indictment for *manu forti expulse & disseisne* instead of *vel disseisne* in the Conjunctive, and quash'd. Cro. Eliz. 96. pl. 9.

No Restitution shall be awarded if the Party indicted hath been three Years in quiet Possession, and his Estate therein not ended or determined.

Foreign Attachment, See Attachment.

Forest.

A Forest is a Place privileged by Royal Authority or Prescription for the peaceable Abiding and Nourishment of the Beasts and Birds of the Forest, for the King's Game, for which there have been peculiar Officers, Laws and Orders.

A Forest, what.

A Forest may be in the Hands of a Subject, and shall be used as a Forest; if the King gives Authority for the Administration of Justice there, and for his Justices to come there, and for the Grantee to have and use Officers of a Forest, then it shall continue a Forest in the Hands of a Subject: But without such Liberties, it being in the Hands of a common Person, is but a Chase. *Cro. Jac. 155. Co. Litt. 233. a. 4 Inst. 298.*

A Forest may be in the Hands of a Subject.

When it becomes a Chase.

That the Owners of the Woods of Forests or Chases in the Hands of Subjects may at their Pleasure without View or Licence of the Forester cut them down, but they ought to leave sufficient Vert there. *Cro. Jac. 155. 4 Inst. 298.*

The Owners may cut down the Woods without Licence, but must leave sufficient Vert.

Parks which have been laid open to Forests for forty Years, may be inclosed again, and they may kill any Deer which come therein. *Cro. Jac. 156.*

Parks laid open to Forests may be inclosed again.

Inclosures cannot be in Forests and Chases, unless with low Hedges, which may not disturb the Game; and though they have been continued forty Years, yet if they were not before, they may be destroyed and laid open. *Cro. Jac. 156.*

What Inclosures there may be, and what not.

Forfeiture.

In Criminal Causes,

In Civil Causes,

Deodand.

Felo de le.

Felony.

Fines.

Jointress.

Treason.

Waif.

Forfeiture, what.

Forfeitures are in Criminal Matters, as where a Person is attainted of Treason, Felony, &c. or else in case of an Estate upon Condition; or else in case of a Copyholder for committing Waste, (without a Custom for it) or refusing to pay his Quit-Rent, or to do his Suit and Service.

Forfeitures in Criminal Matters.

Forfeitures in Criminal Matters are by Conviction or Attainder; Conviction is before Judgment, by Verdict, Confession, or Recreancy; Attainder is upon the Judgment given upon the Verdict, Confession, or Recreancy, or upon the Outlawry, or Abjuration. *Co. Litt. 390 b. 391. a.*

Attainder of Treason or Felony works Corruption of Blood.

Upon an Attainder of Treason or Felony the Blood is so corrupt, That

The Consequences of it.

1. His Children cannot be Heirs to him or any other Ancestor.
2. If he were noble and gentile before, he and all his Posterity are thereby made base and ignoble.
3. It is so high that it cannot be absolutely saved, but by Act of Parliament, or else reversing of the Attainder by Writ of Error with the King's Consent; and although the Blood be restored by Parliament, yet the Estate is not restored without particular Words for that Purpose, or the Reversal of the Attainder upon a Writ of Error entred upon Record. See *Sheffield and Radcliff's Case in Hob.*

How it may be reversed.

Forfeiture.

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For Felony by Chance-medley, *Se. Defendendo*, Petit Larceny, &c. the Forfeiture is only of the Goods and Chattels. *Ibid.* 391. a.

Forfeiture for Chance-medley, &c.

For Robbery, Piracy or Murder committed *super altum Mare*, and tried in the Court of Admiralty by the Civil Law, and not by Jury, the Attainder there works no Corruption of Blood or Forfeiture; but if he be attainted before Commissioners by Force of 28 H. 8. it doth.

For Piracy.

Attainder of *Premunire* works no Corruption of Blood, but is a Forfeiture of Lands in Fee-simple, but not of Lands in Tail. *Co. Litt.* 391. a.

For Attainder of *Premunire*.

Where a Man is attainted of High Treason, he forfeits to the Crown all the Lands whereof he was seised of whomsoever holden.

High Treason.

But where Tenant in Fee is attainted of Felony, and hath Judgment of Death, he shall forfeit his Lands to the Lord of the Manor of whom the same were holden; but the King shall have *annum, diem & vastum*, Magna Charta, cap. 22.

Of Tenant in Fee attainted of Felony.

A Woman shall have her Dower in all Cases but only in case of High and Petty Treason. *Per Stat.* 1 E. 6. cap. 13. 5 E. 6. cap. 11. 5 Eliz. cap. 1. 18 Eliz. cap. 1.

Where a Woman shall have her Dower.

If one take a Wife that is seised of Gavel-kind Lands, and she dieth without Issue by her Husband; her Husband shall be Tenant by the Courtesie of half of the Lands so long as he shall live unmarried; but if he marry again, he shall forfeit his Estate in the Land. *Mich.* 22 Car. B. R. This

If one marries a Wife seised of Gavel-kind Lands, the Wife dies; he shall be Tenant by the Courtesie; but if he marry again, he forfeits his Estate.

is by the Custom of *Kent*; but by the same Custom, if he had Issue by his Wife, then he shall be Tenant by the Courtesie of all the Lands his Wife was seised of; and although he do marry again, he shall not forfeit his Estate. *Mich.* 22 Car. *Quere*, Whether in the former Case he shall forfeit his Tenancy by the Courtesie, if he do live incontinently, as the Wife shall her Dower by a like Custom.

If a Copyholder do deny to pay unto the Lord the Fine due unto him by the Copyholder, where it is a Fine certain, or do refuse to appear at his

How a Copyholder may forfeit his Estate.

Lord's Court, and to do his Suit there; this is a Forfeiture of his Copyhold Estate. *Trin.* 24 Car. B. R. For he holds his Copyhold of the Lord upon these Conditions implied in Law; but where the Fine is uncertain, it is no Forfeiture; for the Lord is not to be Judge in his own Case, but the Law will adjudge between Lord and Tenant.

If a Copyholder do let his Copyhold unto another for Years, and the Lessee do fell the Timber growing upon the Copyhold, yet this is not a Forfeiture of the Copyhold Estate. 6 Nov. 1650. B. S. Because the Copyholder himself did not do it; and let his Copyhold for Years, and so did no Wrong.

If Copyholder lease for Years, and Lessee fells Timber, it is no Forfeiture.

he had Power to

There

No Forfeiture for
Treason of dead Persons
not attainted.

34 E. 3. rap. 12.

Whatever a Man hath
in his own Right he may
forfeit; not always what
he may grant.

A Man may prescribe
to keep Sheep, or have
Warren in a Forest.

And although there
hath been a *Non-user* for
some Years, yet it is no
Forfeiture.

Where the *Non-user* of
Fairs, Markets, Courts, &c.
is a Forfeiture.

But the *Non-user* of
Parks or Warrens is not,
and why.

Trover lies for the
Owner of stolen Goods
after Conviction of Fe-
lony, unless the Pro-
perty be altered by a
Sale in Market-Overt.

Sale in a Market-Overt;

Or Inquisition found.

What Forfeiture for
Petit Treason, Murder,
Homicide, burning of
Houses, Burglary, Rob-
bery.

No Forfeiture can be
imposed by Patent.

Copyholder for Life
commits Felony.

the Lord, but to him in the Reversion; because the Estate for Life was determined by the Attainder: For a Copyholder (in the Eye of the Law) is but a Tenant at Will, and the Attainder determines the Will; for by the Attainder he cannot hold an Estate: But of this Determination the Grantee in Reversion shall take the Advantage. 3 Lev. 94. See 1 Lev. 263.

Attainder determines
the Estate.

the Grantee in Reversion shall take the Advantage. 3 Lev. 94. See 1 Lev. 263.

Two Copyholders for
Life; the first commits
Waste, the next shall
have the Forfeiture.

Forfeiture.

There shall be no Forfeiture of Lands for Treason of dead Persons not attainted.

It is a Maxim, That what a Man hath in his own Right he may forfeit; but it is not a certain Rule, That whatsoever a Man may grant he may forfeit. 4 Leon. Case 208.

A Man may prescribe to have Warrens, or keep Sheep in a Forest, though they were in the King's Hands: And where there is a Prescription for a Warren, although it had not been used divers Years, yet a *Non-user* is no Cause of Forfeiture: But the *Non-user* of a Fair, Market, Courts, or such like Liberties, wherein the Subjects have Interest for their common Profit or Justice is a Cause of Seizure: But the *Non-user* of Parks or Warrens, &c. which are for the Profit only or Pleasure of the Owner, is not any Cause of Forfeiture. Cro. Jac. 155. pl. 5.

A Person who had stolen a Watch was convicted of Burglary; the Bailiff of the Dutchy seized this Watch as Felons Goods, and in an Action of Trover brought against him by the Owner of the Watch, it was held, That the Action well lay, because the Property was not proved to be altered by Sale in a Market-Overt; neither was there a Forfeiture found by Inquisition at the Suit of the King: But if it had been found by Inquisition, then the Owner of the Watch must have pleaded it off. Trin. 10 W.

For Petit Treason, Murder, Homicide, burning of Houses, Burglary, Robbery, &c. where Judgment is given, That they shall be hang'd by the Neck till they are dead, they forfeit all their Lands in Fee-simple, Goods and Chattels.

No Forfeiture can be imposed upon a Subject by Patent. 8 Rep. 125. a.

A Copyholder for Life commits Felony, and is attainted of it, he in Reversion for Life enters, the Copyholder is pardoned: The Forfeiture is not to him in the Reversion; because the Estate for Life was determined by the Attainder: For a Copyholder (in the Eye of the Law) is but a Tenant at Will, and the Attainder determines the Will; for by the Attainder he cannot hold an Estate: But of this Determination the Grantee in Reversion shall take the Advantage. 3 Lev. 94. See 1 Lev. 263.

Lands are granted by Copy to two successive for their Lives; the first cuts Trees; this is a Forfeiture of his Copyhold, and he shall forfeit it to him in Reversion:

Forfeiture.

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Reversion : So if a Stranger cuts Trees, or another who occupies by their Sufferance, this is a Forfeiture. *Dal. 49. pl. 12.*

Where Acts of a Stranger shall be a Forfeiture.

The Lord cannot seise for the Forfeiture of a Copyhold Estate without a Custom: But he may seise till the Heir comes of Age, without a Custom. *1 Lev. 63.*

Where the Lord may seise for the Forfeiture of a Copyhold Estate, and where not.

Upon a Forfeiture of a Copyhold the Lord may grant the Copyhold before Seisure: Because this is a Determination of the Will, and is immediately in the Lord, as in his Reversion. *1 Lev. 26. See 3 Lev. 94.*

The Lord may grant a forfeited Copyhold before Seisure.

Dominus pro tempore of any legal Title, although at Will, may admit a Copyholder after a Forfeiture, and it is good; for he may make voluntary Grants: But a Lord by Tort or Disseisin cannot by such Admittance purge the Forfeiture, as to the rightful Lord. *1 Lev. 26, 27.* But a Lord, who is a Disseisor, may admit the Heir of a Copyholder upon a Discent, and it shall bind the rightful Lord.

Where a *Dominus pro tempore* may admit a Copyholder after Forfeiture.

But a Lord by Tort cannot.

Non-payment of a Fine is no Forfeiture of a Copyhold Estate, unless there be a Demand and Denial of it: Also, the Unreasonableness of a Fine must come on the Tenant's Part. *Hob. 135.*

Where Non-payment of a Fine no Forfeiture.

The Unreasonableness of the Fine must come on the Tenant's Part.

Tenant for Life suffers a Recovery of his Estate before *14 Eliz. cap. 8.* it is a Forfeiture, and he in Remainder may enter. *1 Rep. 14, 15, 16.*

Recovery by Tenant for Life is a Forfeiture for him in Remainder. *14 Eliz. c. 8.*

Tenant for Life bargains and sells to *A.* in Fee, and afterwards levies a Fine *sur Conusance* to the Bargainee; this was a Forfeiture committed by the Bargainee, and not by the Bargainor, who at the Time of the Fine had nothing to forfeit. *1 Leon. Case 354.*

Where the Bargainee of Tenant for Life commits the Forfeiture, and not the Tenant for Life, and why

Where a Tenant for Life is impleaded, he ought to attend upon him in the Reversion, and to expect Instructions from him in the Defence of his Title; and therefore if he makes Default, or confesseth the Action, it is a Forfeiture. *2 Leon. Case 89.*

Where Tenant for Life makes Default, or confesses the Action, it is a Forfeiture.

Tenant for Life bargains and sells by Deed inrolled; although no Fee passeth, yet it is a Forfeiture. *Ibid. Fol. 64.*

Bargain and Sale by Tenant for Life is a Forfeiture.

A Forfeiture by Tenant for Life is not only where there is a Discontinuance; but where he doth an Act in a Court of Record, whereby his Will may appear to disinherit him in Reversion; as to pray in Aid of a Stranger, &c. *Cro. El. 757. pl. 25.*

What are Forfeitures of Tenant for Life.

All Estates, Charges, Leases, &c. made by Tenant for Life before the Forfeiture of his Estate, remain good till the Death of the Tenant for Life. *1 Rep. 67. a.*

All Leases, Charges, &c. made by Tenant for Life, remain good, after Forfeiture of Tenant for Life.

Tenant

Tenant for Life, Remainder in Tail, Tenant for Life, and first Remainder levy a Fine, it is no Forfeiture.

and held none; neither doth it make any Discontinuance, for each gave what he lawfully might. 1 Rep. 76. *Breedon's Case*.

Tenant for Life, Remainder in Tail, Reversion in Fee, enfeoffs the Reversioner.

Tenant for Life, Remainder in Tail, Remainder in Tail; Tenant for Life, and the first Remainder Man in Tail levy a Fine: And then he in the first Remainder in Tail dies without issue, and the other Remainder Man enters for a Forfeiture,

Tenant for Life, Remainder in Tail, Reversion in Fee; Tenant for Life enfeoffs the Reversioner; it is a Forfeiture of his Estate, and divests the Estate-Tail. 1 Rep. 140. a.

Where a Forfeiture is found of an Office of Inheritance by Inquisition.

A Forfeiture of the Office of Marshal of the King's Bench (which is an Office of Inheritance) was found by Inquisition out of the *Petty-Bag Office*; and it was strongly moved by the King's Counsel for a Writ of Seizure. But the Lord Keeper upon great Consideration did refuse to grant it, and gave the Defendants a reasonable Time to traverse the Inquisition peremptorily. *Hill. 5 W. & M. in Canc.* For although the Inquisition finds a Title in the King, yet the Inquisition is traversable; and it is very hard to turn a Man out of Possession upon a bare Inquest of Office, without hearing what the Defendant hath to say for himself.

An Officer for Life commits a Forfeiture, it is to him in Reversion, not to the King.

An Officer for Life commits a Forfeiture of his Office, the Forfeiture is to him in Reversion, and not to the King. 3 Lev. 288. See 1 Plow. 378. to 382.

Register's Office is within the Statute of 5 & 6 E. 6. cap. 16.

An Archdeacon for Money grants his Office of Register: This is an Office within the Statute of 5 & 6 E. 6. cap. 16. and forfeited to the King, not to the Bishop. 3 Lev. 289.

Who shall have the Forfeiture upon a Statute.

Where a Statute gives a Forfeiture generally, the Forfeiture is intended to be given to the King: But where the Forfeiture is a Prejudice to any particular Person, this Person shall have the Forfeiture. 3 Lev. 290.

The King may, without an Office, grant an Office forfeited to himself.

Where an Office is forfeited to the King, he may grant it without Office found; because no Estate or Freehold is divested: But the Office is become void, and the Power of disposing of it is come to the King. *Ibid.*

What Refusal to pay a reasonable Fine, is a Forfeiture of a Copyhold Estate.

A Copyhold Fine was assess'd, and appointed to be paid, and was a reasonable Fine, and demanded of the Party, who refused to pay it, and so forfeited his Copyhold. 3 Lev. 252. It is not a Refusal upon a dubious Matter that shall forfeit a Copyhold Estate; but it must be an obstinate and wilful Refusal. 3 Lev. 308.

Recovery suffered by Tenant for Life, a Forfeiture to him in Remainder.

A Recovery suffered by Tenant for Life is a Forfeiture to him in Remainder. 1 Rep. 15. a. b.

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If a Lease be so made, that it is to be forfeited if the Rent reserved in the Lease be not paid as the Lease doth provide; although the Rent be not paid as the Lease requires, yet there is no Forfeiture to be taken, if there was not an actual and legal Demand of the Rent made by the Lessor, and Entry after that: For the Law doth not favour defeating of Estates; and it cannot also so well appear, that there was an actual Failure of Payment.

How a Lease for Years is to be forfeited for Non-payment of Rent.

A Demand and Entry.

It is a standing Rule in Equity, That a Forfeiture for a Condition broken shall not bind where the Thing may be done afterwards, or any Compensation made for it. *2 Ventr. 352. See 1 Mod. 300, &c.*

Where Forfeitures for a Condition broken shall not bind.

Where there is a Devise over to a third Person after a Forfeiture, Forfeitures are in such Cases generally binding. *Ibid. and 1 Mod. 300, 301, &c.*

Where they are generally binding.

By the Conviction of a Felon his Goods and Chattels are forfeited; but by Attainder his Lands and Tenements are forfeited, and his Blood corrupted. *Co. Litt. 291. a.* This must be understood of Felonies punishable by Death, not for Petit Larcenies. *2 Inst. 37.*

When a Felon forfeits his Goods, when his Lands.

The Forfeiture in case of Felony shall relate to the Time mentioned in the Indictment when the Felony was committed, as to the avoiding of all Estates, Charges and Incumbrances made by the Felon after the Felony committed; but for the mean Profits of the Land it shall relate only to the Judgment, and this as well in case of Outlawry as other Cases. *Co. Litt. 390. b.*

When the Forfeiture shall relate in case of Felony.

Also in case of Outlawry.

For all Crimes for which any shall have Judgment to be hanged by the Neck till he be dead, he shall forfeit all his Lands in Fee-simple, and his Goods and Chattels. *Co. Litt. 391. a.*

The Forfeiture where the Judgment is to be hanged by the Neck till he be dead.

For Felony by Chance-Medley, *se defendendo*, or Petit Larceny, he shall forfeit his Goods and Chattels, but no Lands. *Ibid.*

What the Forfeiture is for Chance Medley, *se defendendo*, or Petit Larceny.

A Trust of a Term shall be forfeited to the King for Felony, and the Trustees shall be compelled in Equity to assign over the Residue of a Term. *Cro. Jac. 512. pl. 23. 513.*

A Trust of a Term is forfeited to the King for Felony.

But the Trust in a Freehold shall not be forfeited for Treason. *Ibid.*

A Trust of a Freehold is not forfeited for Treason.

The King shall have the Lands of a Person convicted of Felony for a Year and a Day, and then they shall be delivered to the Lord of the Fee. *Note, This is when a Tenant in Fee is attainted. Co. 2 Inst. 37.*

The King shall have the Felon's Lands for a Year and a Day, and the Lord afterwards.

Magna Charta, c. 22. Note, This is in Case of a Tenant in Fee.

But where a Tenant for Life or a Tenant in Tail is attainted, the King shall only have the Profits of the Lands during the Life of Tenant for Life, and Tenant in Tail. *Ibid.*

How to be in the Case of Tenant for Life and Tenant in Tail.

For

Formedon.

See Limitation of Real Actions.

OF Formedons there are three Manner of Writs, viz.

Formedon in Discender.

Formedon in Discender, and that is, where Tenant in Tail enfeoffs another (which is a Discontinuance) or is disseised and dies, the Heir shall have a Writ of Formedon in Discender to recover the Land.

Formedon in Remainder.

Formedon in Remainder is where one gives Land in Tail, and for Default of such Issue the Remainder to another in Tail; if the first Tenant in Tail die without Issue, he in the Remainder shall have this Writ.

Formedon in Reverter.

Formedon in Reverter lies where the Issue in Tail are all dead without Issue, then the Donor to whom the Reversion comes for want of Issue of the Tenant in Tail shall have this Writ to recover his Reversion, and these Writs are given by the Statute of Westminster, 2 Car. 1. De Donis Conditionalibus.

11. 2. cap. 1.

A Formedon shall lie as well against a Pernor of the Profits, as against the Tenant of the Freehold.

1 H. 7. cap. 1.

He shall have Aid, and his Heir shall have his Age.

other Advantages, as if the Ancestor had died seised of the Land in Demand.

Also, That all Recoveries in such Actions against such Pernors and their Heirs, shall be as good to the Recoverors and their Heirs, as if the Pernor was Tenant indeed of the Freehold of the Lands and Tenements at the Time of such Action brought. 1 H. 7. cap. 1.

A Formedon shall be maintainable against the Pernor of the Profits, who shall be named as Tenant in the said Action, and have the same Vouchers, and their Lien thereupon, Aid-praier, and all other Advantages, as Tenants indeed, or their Feoffees, could have had; and upon the Death of such Pernor his Heir shall have his Age, and all other Advantages, as if the Ancestor had died seised of the Land in Demand.

Forma Pauperis.

See Damages.

Where a Man will swear that he hath not ten Pounds in the World except his Wearing-Apparel, and the Thing he sues for; a Judge will upon a Petition, and such an Affidavit, admit him to sue *in Forma Pauperis*, and assign him Counsel, and an Attorney.

Who may sue *in Forma Pauperis*.

By *Wild* at the Bar, it was said, That none ought to be admitted to sue *in Forma Pauperis* in an Action of the Case for Words.

None ought to be admitted to sue *in Forma Pauperis* in an Action of Words.

If one that is admitted to sue *in Forma Pauperis*, will not proceed according to the Rules of the Court, but useth Delays to vex his Adversary, the Court will dispauper him. (*Mich. 22 Car. B. R.*) For the Law doth not favour the Poor to do Injury to others, but to help them to recover their Right, where they want Ability of themselves to do it.

The Court will dispauper a Man who will not proceed according to the Rules of the Court.

If it be proved unto the Court, that one who sues *in Forma Pauperis* is a vexatious Person, and hath many frivolous Suits depending, the Court will dispauper him. 1654. B. S. For this will be a Means to make him less contentious, and the Law doth not favour unnecessary vexatious Suits.

The Court will dispauper a vexatious Person.

Rolle Chief Justice said, That he did not use to admit any one generally to sue *in Forma Pauperis*, that is, to sue in all Causes, but only to sue so in one Cause by Virtue of that Admittance, 1654. B. S. So that if he had other Cause to shew, he must petition again to be admitted to sue *in Forma Pauperis*, & sic toties quoties.

A Man should not be admitted to sue generally *in Forma Pauperis*.

Before a Person is admitted to sue *in Forma Pauperis*, he must have a Counsel's Hand to his Petition, certifying the Judge to whom the Petition is directed, that he conceives the Petitioner hath good Cause of Action; and he must also make Oath that he is not worth ten Pounds all his Debts paid, except the Matter in Question.

What a Man must do to be admitted *in Forma Pauperis*.

The first *Forma Pauperis* Act.

11 H. 7. c. 12.

Where they must be whipp'd.

23 H. 8. c. 15. Sect. 2.

Cause of Action, and therefore he must make Satisfaction to the Defendant for unjustly vexing of him in his Person.

Forma Pauperis.

An Act entituled, *A Means to help and speed poor Persons in their Suits*, is the first *Forma Pauperis* Act, which see 11 H. 7. cap. 12.

If one that doth sue in *Forma Pauperis* be non-suit at the Trial, he must not pay Costs to the Defendant, but shall suffer such Punishment as the Court shall award. By the Statute of 23 H. 8. cap. 15. sect. 2. For the Law will judge he had no

Foundation.

The King only can found a Chapel, and why.

The Foundation of a Thing may alter the Law, but not to a general Prejudice.

NOne have Power to found a new Chapel but the King: (*Hill. 23 Car. 1. B. R.*) For it is as much as to create a new Tenure.

The Foundation of a Thing may alter the Law as touching that particular Thing; (*Hill. 23 Car. 1. B. R.*) but not to a general Prejudice.

Franchise.

See { Prescription.
Duo Warranta.
Waif.
Wreck.

A Franchise, what.

A Franchise Royal is where the King grants to one and his Heirs that he shall be quit of Toll; or grants Deodands, or Bona & Catalla Felonum & Fugitivorum, and the like.

Franchise.

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No Franchise shall be allowed in any Case where the Franchise doth fail to administer Justice within the Franchise ; but if there be such a Failer, this Court by their Authority may intermeddle (notwithstanding the Privileges of the Franchise) to compel them to do Justice. (*Mich. 22 Car. B. R.*) For Privileges are not granted to protect Men in neglecting to do Right, or to do Wrong ; and this Court is the Superintendent Court of the Nation, to see Justice equally distributed to all Persons.

No Franchise shall be allowed where they fail to administer Justice within the Franchise.

The Sheriff upon a *Non omittas, Capias utlagatum*, or *Quo minus*, may enter and make an Arrest in any Franchise.

When the Sheriff may arrest in any Franchise.

Where the Privileges of a Franchise are misused or abused, it is upon a *Quo Warranto* brought, a Forfeiture.

How when a Franchise is forfeited.

When any Thing is shewed to be done within a Liberty or a Franchise, it is not necessary to shew within what County that Liberty or Franchise doth lie. (*Trin. 23 Car. 1. B. R.*) For the Franchise hath no Relation to the County.

Need not shew in what County a Franchise lies.

Felons Goods, and Outlaws Goods, and the like, grow due by Charter, and cannot be claimed by Usage in *Pais*, they only becoming due by Matter of Record. *Co. 2 Inst. 281. See 9 Rep. 27. b. 2 Inst. 281.*

What Franchises must be claimed by Grant.

Those Franchises which may be claimed by Usage and Prescription, as Wreck of the Sea, Waif, Stray, Fairs, Markets, and the like, are gained by Usage, and may become due without Matter of Record. *Co. 2 Inst. 281. See Co. 9 Rep. 27. b.*

And what by Usage and Prescription.

Frauds.

THE Statute of 13 *Eliz. cap. 5.* extends to fraudulent Conveyances to defraud Creditors : And the Statute of 27 *Eliz. cap. 4.* extends to fraudulent Conveyances to defraud Purchasers. *Mich. 9 W. B. R.*

What fraudulent Conveyances extend to 27 *Eliz. cap. 4.* and 13 *Eliz. cap. 5.*

The Statute of 13 *Eliz. cap. 5.* against fraudulent Conveyances and Grants of Lands and Goods, for defrauding of their Creditors and others, of their just and lawful Actions, Debts, Forfeitures, Penalties, Heriots, Reliefs, &c. gives to the Queen one

The Punishment of the Makers of fraudulent Grants to defraud Creditors. 13 *Eliz. cap. 5.*

Moiety

This Act was made perpetual by an Act 29 Eliz. cap. 5.

Moiety of a Year's Value of the Lands, &c. and the whole Value of the Goods, and so much Money as shall be contained in such fraudulent Grant, and the other Moiety to the Party grieved. See a Case upon this Statute upon a Grant of all his Cattle made by a Copyholder to defraud the Lord of an Heriot. 2 Leon. Case 10.

By whom a fraudulent Conveyance is made void.

A fraudulent Conveyance is not made void by the Statute against all Persons, but only against those who afterwards come to the Land upon good Consideration. Cro. El. 445.

A voluntary Conveyance after Marriage shall not make void a fraudulent Conveyance before.

A Man makes a Lease for Years without Consideration, and afterwards conveys the Land to his Wife for Jointure after Marriage; because this Conveyance to the Wife was voluntary without valuable Consideration, the Wife could not avoid the Lease by averring that it was fraudulent. Cro. Eliz. 445.

Where a Conveyance after Marriage shall not be fraudulent.

A voluntary Conveyance shall be intended to be fraudulent at the beginning, but if at the Time of the Marriage, or afterwards, by reason of a Portion given by the Wife's Friends in Recompence thereof, and for a Provision and Maintenance of his Wife, he made such Assignment to some of his Wife's Friends, and sold it during the Term, yet it had not been within the Statute. Cro. Jac. 158. pl. 9.

Fraudulent Conveyance made by the Father, and the Lands sold by the Son.

Where a Man makes a fraudulent Conveyance, and he, or his Son after his Death, (which Son knew not of it) sells the Land: The Vendee shall avoid it as fraudulent. 6 Rep. 27. a. b.

A private Jointure to a Wife to defraud a Purchaser, shall be fraudulent.

Where a Man privately makes an Estate to the Use of his Wife for a Jointure, by Fraud, to defraud a Purchaser to whom he intended to sell: If in such Case the Fraud be proved, or confessed in Pleading, the Purchaser shall avoid such Estate. 6 Rep. 73.

What shall be a fraudulent Conveyance, and what not.

A Feme Covert joins in the Alienation of her Jointure, and hath a new Deed of Settlement of other Lands dated the same Day: This is not fraudulent against a Purchaser; for the old Settlement being destroyed, and a new one made the same Day, it shall be presumed, that there was an Agreement to make the new Settlement upon the Wife's parting with the old. 2 Lev. 70, 71.

Badges of Fraud.

See several Badges of a fraudulent Conveyance. 2 Lev. 146, 147.

Where a voluntary Lease was made good by Assignment.

A voluntary Lease for 400 Years made good by Money being paid upon the Assignment of it. 3 Lev. 388.

An Act to relieve Creditors against fraudulent Devises.

An Act for Relief of Creditors against fraudulent Devises. See Title Devise, and Title Heir. Stat. 3 & 4 W. & M. cap. 14.

3 & 4 W. & M. cap. 14.

Frauds and Perjuries. 29 Car. 2. cap. 3.

For the Statute of Frauds and Perjuries, made 29 Car. 2. cap. 3. See Title Assumpsit.

The several Marks of Fraud in the Grant of Goods :

The several Marks and Badges of Fraud.

1. If it be general, without Exception of his Apparel, or some Things of Necessity.
2. If the Donor continues in Possession of the Goods, and uses them.
3. If the Deed be made in Secret.
4. If there be a Trust between the Parties.
5. If made pending the Action.

These are all Badges of Fraud, although made for a just and true Debt. *Twine's Case. 3 Rep. 80. b.*

Therefore says the Lord Coke, If any Person (indebted to others) grants any Goods in Satisfaction of a Debt, let it be publickly done before Neighbours.

How to make a good Bargain and Sale of Goods.

Also let the Goods be appraised by honest Men, at the true Value, and take a Grant of them in Particular for Satisfaction of your Debt.

Also take them into your Possession immediately after the Execution of the Deed. *3 Rep. 80, 81.*

The Statute of *13 Eliz. cap. 1.* makes the Deed void against Creditors, but not against the Party himself, his Executors or Administrators; for against them it remains good. *Cro. Jac. 271.*

The Statute makes the Deed void against Creditors, not the Party himself.

13 Eliz. cap. 1.

A Man makes a voluntary Conveyance, and then mortgages the same Land; the first Deed is upon a Trial found fraudulent, he to whom the Deed is made exhibits his Bill to redeem the Mortgage. It was held, that tho' the first Deed was fraudulent (being voluntary) *quoad* the Mortgage-Money, yet it was good to pass the Equity of Redemption. *Chanc. Rep. 59.*

A fraudulent Conveyance as to the Mortgagee may yet come in for the Equity of Redemption.

A covinous Payment, as paying the whole Money, and making an Agreement to have Part returned, which was done, is no Performance of a Condition. *Cro. El. 383. pl. 4.*

A covinous Payment is no Performance of a Condition.

Where Leases are made with a Proviso, that if the Lessor pays *10 s.* the Lease to be void, because *10 s.* is not the Value of the Land, but only limited as a Power of Revocation, it is void as to a Purchaser. But where he mortgages his Land for *100 l.* Proviso, that if he pay *100 l.* the Lease shall be void, this shall be good against a Purchaser. *Cro. Jac. 455.*

Where the Proviso makes the Lease fraudulent, and where not.

Where a Man is Party to a Fraud, all which follows by reason of that Fraud, shall be said as done by him. *Cro. Jac. 469.*

The ill Consequence of being Party to a Fraud.

Fraudulent Conveyances made to defraud Purchasers for valuable Considerations shall be void.

27 Eliz. cap. 4.

and deceive a Purchaser in Fee-simple, Fee-tail, for Life, or Years, the same Lands, &c. so formerly conveyed, granted, leased, charged, incumbered or limited in Use, or to defraud such as have or shall purchase any Rent or Profit in or out of the same, or any Part thereof, shall be deemed and taken against any Person, or any claiming under him, who hath or shall purchase for Money, or other valuable Considerations, the same Lands, &c. or any Part thereof, or any Rent or Profit out of the same, to be utterly void, any Pretence, Colour, feigned Consideration or expressing any Use to the contrary notwithstanding.

The Penalty of the Parties to fraudulent Conveyances.

Proviso not to make void Conveyances made upon good Considerations *bona fide*.

Conveyances with Power of Revocation void against a Purchaser for Money or other valuable Considerations.

Charge or Limitation not by him revoked, made void or altered, then the first Conveyance of the Lands so bargained, sold, &c. against the Bargainee, Vendee, Lessee, &c. and every Person who lawfully claims under them, shall be deemed and taken to be void and of none Effect. Sect. 5.

Proviso to save Mortgages made *bona fide* without Fraud.

Where a Conveyance may be fraudulent against Articles.

The Baron assigns a Term of his Feme in Trust for her, this is fraudulent as to Purchasers.

What Grants are within the Proviso of 13 Eliz. cap. 5. And what not.

bona fide, is not within the Proviso; so a Grant made *bona fide*, except upon good Consideration, is not within the Proviso. 3 Rep. 81. b. 82. a.

By the Statute of 27 El. cap. 4. it is enacted, That all and every Conveyance, Grant, Charge, Lease, Estate, Incumbrance and Limitation of Uses, of, in or out of any Lands, Tenements, or other Hereditaments to be had or made for the Intent to defraud

and deceive a Purchaser in Fee-simple, Fee-tail, for Life, or Years, the same Lands, &c. so formerly conveyed, granted, leased, charged, incumbered or limited in Use, or to defraud such as have or shall purchase any Rent or Profit in or out of the same, or any Part thereof, shall be deemed and taken against any Person, or any claiming under him, who hath or shall purchase for Money, or other valuable Considerations, the same Lands, &c. or any Part thereof, or any Rent or Profit out of the same, to be utterly void, any Pretence, Colour, feigned Consideration or expressing any Use to the contrary notwithstanding.

See the Penalty of the Parties to fraudulent Conveyances, who do avow and justify the same. Sect. 3.

Proviso, That this Act shall not defeat or make void any Conveyances made of Lands, &c. upon or for good Consideration and *bona fide* to any Person, &c. Sect. 4.

Where Conveyances are made with Power of Revocation, and the Party after such Conveyance shall bargain and sell, convey or charge the same Lands, &c. to any Person for Money or other good Consideration paid or given, the first Conveyance,

Charge or Limitation not by him revoked, made void or altered, then the first Conveyance of the Lands so bargained, sold, &c. against the Bargainee, Vendee, Lessee, &c. and every Person who lawfully claims under them, shall be deemed and taken to be void and of none Effect.

Proviso, That it shall not impeach Mortgages made *bona fide*, and without Fraud, upon valuable Considerations. Sect. 6.

A Conveyance cannot be fraudulent against Articles without another Conveyance be executed in a legal Form. Chanc. Rep. 217.

The Husband after Marriage assigns a Term of his Wife's in Trust for his Wife, this is voluntary and fraudulent against Purchasers. Ibid. 225.

A valuable Consideration is a good Consideration within the Proviso of the Act of 13 Eliz. c. 5. and a Grant *bona fide* is a Grant made without any Trust either expressed or implied; so that a Grant made upon good Consideration, unless it be also *bona fide*, is not within the Proviso; so a Grant made *bona fide*, except upon good Consideration, is not within the Proviso. 3 Rep. 81. b. 82. a.

Frauds.

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What voluntary Conveyances are good, and what not, in case of Creditors and Purchasors, for valuable Considerations. See *Twine's Case*, 3 Rep. 80. to 83. b.

What voluntary Conveyances are good, and what not.

The Statute of 27 *Eliz. cap. 4.* hath made all voluntary Deeds, with Power of Revocation as to Purchasors, in equal Degree with Conveyances, made by Fraud and Covin to defraud Purchasors.

Voluntary Deeds, with Revocation, fraudulent. 27 *Eliz. cap. 4.*

3 Rep. 83.

By the Common Law an Estate made by Fraud shall be avoided only by him who hath a former Right, Title, Interest, Debt or Demand. *Ibid.*

Who shall avoid an Estate made by Fraud.

A Consideration of natural Love and Affection, is not a good Consideration, intended by the Statute of 27 *Eliz. cap. 4.* For Money paid, or other good Consideration given, are only good Considerations within the Act. 3 Rep. 83. a b.

Natural Love and Affection, not a good Consideration. 27 *Eliz. cap. 4.*

Where Fraud or Covin is not expressly averred, it shall not be presumed. 10 Rep. 56. a. Neither shall the Court adjudge it to be so, unless expressly found by the Jury. 10 Rep. 56. b.

Covin not presumed, unless averred. Must be expressly found by the Jury.

What Deeds are fraudulent, and what not, in case of Purchasors of Land. See *Twine's Case*.

What Deeds are fraudulent, and what not, as to Purchasors.

Where Lands are twice mortgaged without Notice, or Mortgages made after a Judgment, Statute or Recognizance. See Title Mortgage; and the Statute of 4 & 5 *W. & M. cap. 16.*

Fraud in mortgaging of Lands twice. 4 & 5 *W. & M. c. 16.*

Freehold.

See { Grants.
 { Uses.

Freehold is an Estate that a Man hath in Lands or Profits to be taken in Fee-simple, Fee-tail, for Life, in Dower, or as Tenant by the Courtesie; and under those there are no Freeholds: A Freehold is called in Latin, *Liberum Tenementum*.

Freehold, what.

Where a Man pleads generally *Liberum Tenementum*, it shall be intended that he hath an Estate in Fee, and not a bare Estate for Life. *Cro. El. 87. pl. 9.*

Where a Freehold is pleaded, it shall be intended an Estate in Fee.

What.

What is Part of the Freehold goes to the Heir.

Glass Windows, Part of the Freehold :

And so is Wainscot.

If Wainscot be affix'd to the House, either by the Lessor or Lessee, it is Parcel of the House ; and there is no Difference in Law, whether it be fix'd with great or little Nails or Scrues, or Irons thrust through the Posts or Walls, as hath been lately invented : But if the Wainscot be by any of these Ways, or any otherwise fix'd to the Posts or Walls of the House, the Lessee cannot remove them ; if he doth, he is punishable in an Action of Waste. 4 Rep. 64.

A Freehold cannot commence *in futuro*, Livery by Lessor, by Attorney.

An Estate of Freehold cannot by the Common Law commence *in futuro* ; but take presently in Possession, Reversion or Remainder : But a Lease for Years may commence *in futuro* ; but not a Lease for Life. 5 Rep. 94. See there much good Matter as to Livery to Lessee, and where by Attorney.

The Estate shall pass according to the Intent of the Grantor.

A Man gives and grants to his Son and his Heirs his Lands after his Death, and no Livery was made. Now if there had been Livery, it had been void, because a Freehold cannot commence *in futuro*. But whether it shall enure as a Covenant to stand seised, or not, was the Question, and held not ; because by the Word *give* he intended a Transmutation of the Estate, and not to pass it by way of Use. March 50, 51. pl. 78.

What a Freehold in Law is.

A Freehold in Law is, where a Man dies seised, and leaves a Son, to whom his Estate descends : He hath till his actual Entry but a Freehold in Law.

Future Interest, See Surrender.

Game.

SEE an Act made 4 & 5 W. & M. cap. 23. entituled, *An Act for the more easie Discovery and Conviction of such as shall destroy the Game of this Kingdom.*

Acts against destroying the Game of the Kingdom.
4 & 5 W. & M. cap. 23.

No *Certiorari* shall be allowed to remove any Conviction, or other Proceedings, concerning any Matter in this Act; unless the Party, against whom such Conviction shall be made, shall, before the Allowance of such Writ, become bound to the Person prosecuting in the Sum of 50 l. with such Sureties as the Justice before whom such Offender was committed, shall think fit, with Condition to pay the Prosecutor within one Month after such Conviction confirm'd, or *Procedendo* granted, their full Costs and Charges, to be ascertained upon their Oaths; and in Default thereof, it shall be lawful for the said Justice or Justices, and others, to proceed to the due Execution of such Conviction, as if no *Certiorari* had been allowed.

Where a *Certiorari* shall be allowed to remove any Conviction upon this Act.

To become bound in Sureties in 50 l.

The Condition of it.

See the Act made 22 & 23 Car. 2. cap. 25. For the Preservation of Game, and for securing of Warrens not inclosed, and the several Fisheries of this Realm.

The Act for preserving of Game, Warrens not enclosed, and several Fisheries.
22 & 23 Car. 2. cap. 25.

The Statute provides, That Lords of Manors, not under an Esquire, may have one or more Game-keepers within their Manors, who being authorized by Writing under Hand and Seal, may seise such Guns, Bows, Greyhounds, Setting Dogs, Lurchers, or other Dogs, to kill Hares or Conies, Ferrets, Tramels, Lowbells, Hayes, or other Nets; Hare-pipes, Snares, or other Engines for the taking and killing of Conies, Hares, Pheasants, Partridge, or other Game, as within the Precincts of such Manor shall be used by any Person prohibited by this Act to use the same.

A Lord of a Manor, not under an Esquire, may make a Game-keeper.
What they may seise.

That such Game-keeper, or any other Person, by a Warrant from a Justice of the Peace, may in the Day-time search the Houses or other Places of such Person prohibited by this Act, as shall be upon good Ground suspected to keep any of the aforesaid Guns, &c. and to seise and keep the same for the Lord of the Manor where they shall be taken, or otherwise to cut in pieces or destroy them.

They may in the Day-time search Houses, &c. and seise and keep or destroy what shall be found.

Who are prohibited to keep Guns, Dogs, &c. and who are not.

Leases for Ninety-nine Years or longer: Except the Son and Heir apparent of an Esquire, or Person of higher Degree, or the Owners and Keepers of Forests, Parks, Chases and Warrens, stock'd with Deer or Conies.

No Person, without the Owner's Consent, to chase, kill or take Conies in a Ground not inclosed. The Penalty.

Not to kill any Conies in the Night-time on the Borders of a Warren, except by the Owner of the Soil. The Penalty.

Not to kill or set Snares for Hares, &c. or use Hare-pipes, &c.

No Person to fish in any River, Pond, Mote, &c. without the Owner of the Water's Consent. 22 & 23 Car. 2. c. 25. Sect. 7.

The Penalty.

A Justice may cut in pieces all Angles, Spears, Nets, &c. taken with the Offender.

An Appeal lies to the next Quarter-Sessions.

Who are to keep Nets, &c. or other Things to catch Fish. 4 & 5 W. & M. r. 23. Sect. 5.

The Persons prohibited to keep Guns, Dogs, &c. are Persons who have not 100 *l. per Ann.* Inheritance in his own or Wife's Right, or 150 *l. per Ann.* in

No Person shall at any Time chase, kill, or take Conies in a Warren or Ground not inclosed, without the Owner's Consent, upon Pain of treble Damages and Costs, and three Months Imprisonment; and after, till finding Sureties for the good abearing.

No Person shall kill or take in the Night-time any Conies on the Borders of any Warren, or Grounds used for breeding of Conies, except the Owner of the Soil, or some Persons authorized by him, upon pain of making Satisfaction to the Party, and of paying to the Poor of the Parish what

a Justice shall order, not exceeding ten Shillings, and for Non-payment to be committed to the House of Correction not exceeding one Month.

That no Person shall kill or set Snares for Hares, &c. or use Snares, Hare-pipes, or other Engines, upon the same Penalty as the foregoing Clause.

That no Person shall take any Fish by any Means or Device whatsoever, in any River, Stew, Pond, Mote, or other Water, without the Consent of the Owner of the Water, nor shall be assisting therein, and if convicted by Confession, or the Oath of one Witness, before a Justice of the Peace, the Party offending shall pay not exceeding treble Damages, at such Time as the Justice shall appoint, and not exceeding ten Shillings, to the Poor of the Parish; and for want of Distress, the Offender to be committed to the House of Correction, not exceeding one Month, unless he enter into Bond to the Party injured, with one competent Surety not exceeding 10 *l.* never to offend in the like Manner.

The Justice of Peace may upon Conviction of such Offender take, cut in pieces, and destroy all such Angles, Spears, Hairs, Nooses, Trolls, Weares, Pots, Fish-hooks, Nets, or other Engines, where-with such Offenders shall be taken.

That if any Person is aggrieved at the Justices Judgment, he may at their next General Quarter-Sessions appeal from it, and the Judgment of the Justices at the next Sessions shall be final.

By another Act made 4 & 5 W. & M. cap. 23. Sect. 5. it is enacted, That Persons not Owners of Fisheries may not keep Nets, &c. or other Engines for the taking of Fish, other than Makers thereof, for Sale, and the Owner and Occupier of a River or Fishery.

Also

Game.

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Also the Owner of a Fishery may seise Nets, &c. used in his Fishery; and any Person may by Warrant from a Justice search for Nets, and dispose of them as he will, by keeping or cutting and destroying of them.

The Owner of a Fishery may seise Nets, &c.

So may any Person by Warrant from a Justice.

Persons punishable by this Act, punishable no other Way.

Not punishable twice.

Prosecutor upon this Act may plead the general Issue and recover treble Costs.

Prosecutor may plead general Issue, and have treble Costs.

See the Clause immediately going before this Act, where a *Certiorari* shall be allowed to remove a Conviction, and where not.

Where a *Certiorari* shall be allowed to remove a Conviction, and where not.

By another Act made 5 *Anna Reginae*, *Seff.* 2. it is enacted, That all and every the Laws for the Preservation of Game now in being, not thereby repealed or altered, shall be of Force.

The Game Act made 5 *Annae* *Seff.* 2.
1 *Jar.* 1. cap. 27.
23 *Eliz.* cap. 16.
32 *H.* 8. cap. 8.

And that any Higlar, Chapman, Carrier, Inn-keeper, Victualler or Alehouse-keeper, who shall have in his Custody any Hare, Pheasant, Partridge, Moor, Heath Game or Grouse; then every such Person (unless the Game in the Hands of the Carrier be sent up by a Person or Persons qualified to kill the Game) shall upon every such Offence be carried before some Justice of the Peace where the Offence is committed, and upon View or Oath of one credible Witness shall be convicted, shall forfeit for every Hare, Pheasant, Partridge, Moor, Heath Game or Grouse 5 *l.* one half to the Informer, the other to the Poor of the Parish where the Offence was committed, to be levied by Distress and Sale of the Offender's Goods, by Warrant under the Hand and Seal of the Justice, rendring the Overplus (if any) after the Charges of distreining shall be deducted: And where there is no Distress, then the Offender to be committed to the House of Correction for three Months without Bail, and for every such other Offence for four Months.

The Persons prohibited.

The Game prohibited.

Exception as to Carriers.

How the Prosecution to be.

The Forfeiture.

How to be levied.

Provided such Conviction to be within three Months after the Offence committed.

And also the same Clause as to where a *Certiorari* is to be allowed, and where not, as in the preceding Statute of 4 & 5 *W. & M.* cap. 23. is particularly mentioned, and herein before set forth.

4 & 5 *W. & M.* cap. 23.

That any Person that shall destroy, sell or buy any Hare, Pheasant, Moor, Heath Game or Grouse, and within three Months discover any Higlar, Chapman, Carrier, Inn-keeper, Alehouse-keeper, or Victualler, that hath bought or sold, or offered to buy or sell, or had in their Possession any Hare, Pheasant, Partridge, Moor, Heath Game or Grouse, so as any one shall be convicted, such Discoverer shall be discharged of the

What shall be in case of Discovery.

the Pains and Penalties hereby enacted for the killing or selling of such Game, and shall have the same Benefit as any other Informer shall be entituled unto.

No unqualified Person to keep any Greyhounds, Setting Dogs, Hayes, Lurchers, &c.

Justice or Justices

The Penalty.

Who may seize and carry away the Game killed.

And also Dogs, Nets, and other Engines.

The Lord or Lady may by Writing make a Game-keeper.

whatsoever: But if he shall under the Pretence or Colour of that Authority kill and take the same for the Use of such Lord or Lady, and afterwards sell and dispose thereof to any Person without the Consent of the Lord or Lady of the Manor, who gave him his Authority, and shall be convicted thereof upon Complaint of such Lord or Lady upon the Oath of one or more credible Witnesses, before one or more Justices of the Peace as aforesaid, then upon such Conviction he shall be committed to the House of Correction for three Months to be kept at hard Labour.

There is another Clause prohibiting the burning of Heath, Ling, Brakes or Fern in the Forest of Sherwood.

But not to sell without the Consent of the Lord or Lady.

This made perpetual by 9 Annæ.

The Penalty upon Conviction.

A Clause to prohibit the burning of Heath in Sherwood Forest.

No Lord or Lady to have above one Game-keeper, whose Name must be entred with the Clerk of the Peace.

That if any Person not qualified shall keep or use any Greyhounds, Setting Dogs, Hayes, Lurchers, Tunnels, or any other Engine to kill and destroy Game, and shall be thereof convicted upon the Oath of one or two credible Witnesses, by the Justice or Justices of the Peace where the Offence is committed, the Person so convicted shall forfeit 5 £ . one half to the Informer, and the other to the Poor, to be levied as is before particularly directed.

That the Justices of the Peace in their Liberties, and the Lords and Ladies in their Manors, within the said Manors, to take away any such Hare, Pheasant, Partridge, Moor, Heath Game or Grouse, or any other Game, from any Higlar, Chapman, Inn-keeper, Victualler or Carrier, or any other Person not qualified to kill the same, and shall be found in their Custody or Possession, and to take away such Dogs, Nets, and other Engines, which shall be in the Power or Custody of any Person not qualified to keep the same, to their own proper Use.

That any Lord or Lady of a Manor may by Writing under Hand and Seal empower a Game-keeper upon his or her Manor to kill any Game

That

That if any Game-keeper or other Person not qualified to kill, shall sell, or expose to Sale, any Hare, Pheasant, Partridge, Moor Heath Game or Grouse, shall for every Offence incur the Penalties inflicted by the Act upon Higlers, Carriers, &c. and

The Penalty of the Game-keepers or unqualified Persons selling of Game.

so to be recovered.

That if any Hare, Pheasant, Partridge, Moor Heath Game or Grouse, shall be found in the Shop, House or Possession of any Person not qualified or entituled thereunto, shall be adjudged an exposing to Sale.

So if any Game shall be found in a Shop or Possession of any Person.

That if any Person shall in the Night-time take, kill or destroy any of the said Game, he shall incur such Pains and Forfeitures, as aforesaid, to be recovered as aforesaid.

Penalty for killing Game in the Night.

Another Clause for the preventing of the driving and taking by Hayes, Tunnels, or other Nets, wild Fowl, in any of the Fens, Broadwaters, &c. between the first Day of July and first Day of September.

Against driving of wild Fowl.

Gaming and unlawful Games.

The Statute of 16 Car. 2. cap. 7. gives treble Damages against any Person or Persons who shall cheat at Cards, Dice, Horse-Race, &c. And also says, That if any Person shall play at any of the said Games upon Tick, and not for ready Money, and shall lose 100 l. or more upon Tick, his Security taken for it shall be void, and the Winner shall forfeit treble the Value of the Money won. See the Act of 9 Anne more fully as to this Matter; and also *postea* in this Title.

Punishment for false Gaming.

16 Car. 2. cap. 7.

Gaming at several Meetings, whether within the Statute of 16 Car. 2. cap. 7. or not. See 2 Mod. 54.

Gaming at several Meetings.

16 Car. 2. cap. 7.

A Watch was lost and delivered, and afterwards the same Party lost 100 l. upon Tick at one Sitting, and a Bond was given for the 100 l. and held to be good; because the Statute doth not restrain playing for ready Money, but such playing only as put People in Debt. 1 Lev. 244.

The Statute extends not to playing for ready Money.

What the Intent of the Statute is.

The Act for the better preventing of excessive and deceitful Gaming.
2 Anne.

Read the Act, what it makes void, and in what Cases.

Players and Betters.

of 10 l. and shall pay or deliver the same, or any Part thereof, the Person so losing and paying or delivering thereof, may within three Months then next sue for and recover the same from the Winner thereof with Costs of Suit, by Action of Debt founded upon this Act,

How the Penalty to be sued for.

to be prosecuted in any of her Majesty's Courts of Record; in which Action no Privilege of Parliament shall be allowed: And in such Action it shall be sufficient for the Plaintiff to alledge, That the Defendant was indebted to the Plaintiff, or received to the Plaintiff's Use the Money so lost and paid, or converted the Goods won, whereby the Plaintiff's Action accrued to him according to the Form of this Statute, without setting forth the special Matter: And in case the Person who loseth the Money shall not within the Time aforesaid *bona fide* sue for the Money or Thing so by him lost and paid, or delivered, then any Person

Treble Value.

who will sue, and the other to the Poor of the Parish where the Offence shall be committed.

May be compelled to answer upon Oath.

To be acquitted upon Discovery and Repayment.

Where by Fraud or ill Practice above 10 l. is gained at one Sitting.

10 l. at one Sitting,

The Statute intended a Remedy where more than 100 l. was lost to one Person at one Sitting; not where it is lost to several Persons. 5 Mod. 351, 352.

By an Act made 9 Anne, it is enacted, That all Notes, Bills, Bonds, Judgments, Mortgages or other Conveyances, given, granted, drawn or entered into, or executed by any Person, where the Whole, or any Part of the Consideration shall be for any Money, or other valuable Thing, won by playing at Cards, Dice, Tables, Tennis, Bowls, or other Game, or by betting on the Sides of such who play at any of those Games, or for the repaying of any Money lent for such Gaming or Betting, or during such Play shall bett or so play, shall be utterly void, and the Estates thereby granted shall go to the next Person, who ought to have the same as if the Grantor were actually dead.

Also if any Person shall at any one Sitting, by playing at any of the said Games, or betting, lose to any one or more Persons the Sum or Value

of 10 l. and shall pay or deliver the same, or any Part thereof, the Person so losing and paying or delivering thereof, may within three Months then next sue for and recover the same from the Winner thereof with Costs of Suit, by Action of Debt founded upon this Act,

to be prosecuted in any of her Majesty's Courts of Record; in which Action no Privilege of Parliament shall be allowed: And in such Action it shall be sufficient for the Plaintiff to alledge, That the Defendant was indebted to the Plaintiff, or received to the Plaintiff's Use the Money so lost and paid, or converted the Goods won, whereby the Plaintiff's Action accrued to him according to the Form of this Statute, without setting forth the special Matter: And in case the Person who loseth the Money shall not within the Time aforesaid *bona fide* sue for the Money or Thing so by him lost and paid, or delivered, then any Person by any such Suit may sue for and recover the same, and the treble Value thereof with Costs, against such Winner, the one Moiety to the Person

That every Person shall be obliged to answer upon Oath such Bill as shall be preferred against him for the Discovery of the Sum of Money or other Thing so won at play as aforesaid.

That upon the Discovery and Repayment of the Money or other Thing, such Person so recovering and repaying shall be acquitted and discharged from any further Punishment or Forfeiture.

That if any Person shall by Fraud or ill Practice in playing at any of the said Games, acquire to himself or any other Person, above the Value of 10 l. at one Sitting, and being convicted thereof by Indictment or Information,

Gaming and unlawful Games.

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formation, shall forfeit five times the Value of such Sum or Thing so won, and shall be deemed infamous, and suffer such corporal Punishment as in case of wilful Perjury, and such Penalty to be recovered by such Person as shall sue for the same by such Action as aforesaid.

The Forfeiture.

Corporal Punishment.

by such Person as

That two or more Justices of the Peace may cause to be brought before them every Person within their respective Limits, whom they shall have just Cause to suspect to have no visible Estate, Profession or Calling to maintain themselves by, but do for the most Part support themselves by Gaming; and if such Persons shall make it appear before such Justices, that the principal Part of his Expences is not maintained by Gaming, then such Justices shall require of him sufficient Securities for his Good Behaviour for a Year, and not finding such Securities to commit him to the Common Gaol until he shall find such Securities.

Two Justices may bind over a Person not having a visible Estate, or way of living.

To find Securities for the Good Behaviour.

such Securities.

That if any Person so finding of Securities, shall during the Time he is so bound, at one Sitting, play or bett for any Money or Thing exceeding the Sum or Value of twenty Shillings, then that shall be taken to be a Breach of the Good Behaviour, and a Forfeiture of his Recognizance.

Where a second Gaming, and for what shall be a Breach of the Good Behaviour.

That if any Person shall beat, challenge or provoke to fight any other Person upon the Account of Money won by Gaming, Playing or Betting at any of the said Games, and such Person shall be thereof convicted by Indictment or Information, he shall forfeit to her Majesty, her Heirs and Successors, all his Goods and personal Estate, and suffer Imprisonment in the common Gaol of the County where convicted for two Years without Bail or Mainprize.

What shall be done in case there shall be any Beating, Challenging or provoking to fight, upon the account of Gaming.

This is not to hinder any Person from playing at any of the said Games within the Palaces of St. James or Whitehall during her Majesty's Residency at either of the said Palaces, or in any other Royal Palace where she shall be resident, during the Time of such Residence; so as such playing be not in any House, Lodging, or other Part of any of the said Palaces, the Freehold or Inheritance whereof is or shall be out of the Crown, or in Lease to any Person during the Time as such Freehold and Inheritance shall be out of the Crown, and such Lease continue, and so as such playing be for ready Money only.

The Proviso as to the Queen's Palaces, where she shall be Resident.

of such Residence;

Not in any Part of the Palace conveyed away or leased out; it must be for ready Money only.

Debt was brought for 100 l. upon a Horse-Match; and in the same Articles for another 100 l. at the same Time was articted to be run for, if the Plaintiff required it. This is within the Statute of Gaming. 2 Lev. 94. 1 Ventr. 253.

For two several 100 l. upon a Horse-Race.

Gaming and unlawful Games.

Assumpsit lies not for Money won at Play, but it must be laid specially.

differe^d ; but adjudged since,

Security given for Money lost without Privy, is good.

An *Indebitatus* doth not lie for Money won at Play : But a Special Action upon the Case will lie.

2 *Lev.* 118. See 2 *Ventr.* 175. where the Judges differed ; but adjudged since, it will not lie upon a general *Indebitatus*.

Gaming is not within the Statute, where the Security is given for the Money to a third Person, not being privy to the Matter, or knowing that it was won at play. 2 *Mod.* 297.

Gavelkind.

What Gavelkind Tenure is.

Gavelkind is a Custom annexed unto, and going with Lands in Kent, called Gavelkind Lands, holden by ancient Soccage Tenure, and is dividable between the Heirs male ; and the Heir of fifteen Years may give and sell his Land, and shall inherit, though his Father be hanged for Felony, and the Wife shall have the Dower for her Dowry during her Widowhood. *Co. Litt.* 111. a.

All Lands in Kent shall be taken to be Gavelkind, unless they are disgavelled by Act of Parliament.

They must be found to be Gavelkind.

If the King purchase Gavelkind Lands, the Custom is suspended.

Rent granted out of Gavelkind is of the Nature of Lands that may be divided.

A Rent shall descend as the Land doth.

Dividable amongst Brothers.

Tenant by Courtesie, without Issue.

But if he marry, he loses his Tenancy.

All Lands in Kent shall be taken to be Gavelkind, except those which are disgavelled by some particular Acts of Parliament. But see 1 *Lutw.* 754, 755. where 'tis said, That unless Lands in Kent are particularly found to be Gavelkind, the Court shall not intend them to be so.

If the King purchase Gavelkind Land, the Custom of the Descent is suspended. *Dyer* 77.

Rent granted out of Gavelkind Lands is of the Nature of Land dividable : The like of Borough-English. 2 *Lev.* 138. See 1 *Lutw.* 740, 754.

A Rent out of Gavelkind Lands shall descend in Gavelkind as the Lands do. 2 *Lev.* 87.

And as the Estate is upon the Death of the Father dividable amongst all his Sons ; so also when one Brother dies without Issue, all the other Brethren shall inherit. *Co. Litt.* 140. a. b.

Also, by the Custom of Gavelkind, the Husband shall be Tenant by Courtesie, without Issue, of half of the Lands during the Time he continues unmarried. *Co. Litt.* 111. a. But if he marry, he shall forfeit his Tenancy by the Courtesie. But if he had Issue

Gavelkind.

Issue by his Wife, and she die, he shall be Tenant by the Courtesie of the whole Land; and although he do marry, he shall not forfeit his Tenancy. (*Mich. 21 Car. B. R.*) See Title *Forfeiture*.

Now by the Statute of 31 H. 8. cap. 3. a great Part of Kent is made descendible to the eldest Son, according to the Course of the Common Law; for that by Means of that Custom divers ancient Families, after a few Discents, came to little or nothing.

Per Hale Chief Justice. Gavelkind Law is the Law of Kent, and is never pleaded but presumed. 1 Mod. 98.

By the Acts of Parliament 31 H. 8. cap. 3. and 2 & 3 E. 6. (a Private Act) whereby Gavelkind Lands are made descendible, as Lands at Common Law, Gavelkind Lands do not lose any other of the Qualities or Customs appertaining to them; for it was not the Design of either of those Acts to divest those Lands of their former Privileges, which were not expressly altered by the Letter of those Laws; else instead of a Benefit it would be the Loss of their former Privileges. *Hard. 325.*

The Custom to devise Gavelkind Lands remains to this Day notwithstanding any of the disgavelling Statutes. 1 Sid. 136.

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But if he had Issue, he shall be Tenant of the whole Land, and not forfeit by Marriage.

How several Lands in Kent came to be disgavelled.

31 H. 6. c. 3.

Co. Litt. 140. b.

Gavelkind Law is the Law of Kent.

How far the Privileges of it are altered by the Statutes, and where not.

31 H. 8. cap. 3.

2 & 3 E. 6.

Gavelkind Lands are by Custom devisable.

Good Behaviour.

See { Breach.
Justice of the Peace.

Those who are of ill Fame, or common Disturbers of the Peace, or who are accused or guilty of tippling in Alehouses, getting of Bastards, common Barretors, &c.

which see in *Nelson's Justice*, 78, 79, &c. may be required by one Justice of the Peace to enter into a Recognizance with Sureties, or without, to be of the Good Behaviour; and upon Refusal may be committed.

If one do affront any Court of Justice, this is a good Cause to bind the Party to his Good Behaviour. (*Pasch. 24 Car. B. R.*) For the affronting of

Who shall be bound to their Good Behaviour.

An Affront to a Court of Justice is a good Cause to bind to the Good Behaviour.

Justice is a publick Misdemeanour, and not a private; although it be done but to the Person of one Man, as to the Judge of a Court, a Justice of the Peace, &c. because such Persons are publick Ministers of Justice, and act for the Commonwealth.

Upon Articles sworn in Court, some special Matter must be alledged; otherwise the Good Behaviour will not be granted.

He that doth upon Articles sworn in Court, desire the Party against whom the Articles are sworn, may be bound thereupon to the Good Behaviour, must express some special Matter in those Articles, for which he ought to be bound to the Good Behaviour; for if the Articles be only general, the Good Behaviour is not to be granted upon them. (*Mich. 22 Car. B. R.*) For a general Accusation is no Accusation for the Incertainty of it; and the Party cannot tell what Answer to make to such a general Accusation.

A Man may not be bound to the Good Behaviour for Perjury.

Perjury is not an Offence, for which the Party perjured may be bound to the Good Behaviour, because it is not a general Misbehaviour. (*Mich. 22 Car. B. R.*) But the Party may be indicted for it, and fined, if he be thereupon convicted.

It lies for frightening People in the Night.

One was bound to his Good Behaviour for affrighting People in the Night in their Houses, by shooting off of Muskets; and for the assaulting of one going in the Highway. (*Mich. 22 Car. 1. B. R.*) For this was accounted more than a particular Breach of the Peace.

Against a common Scold.

A Woman who is a common Scold, may be bound to the Good Behaviour. (*Mich. 22 Car. 1. B. R.*) For she is a common Disturber of the publick Peace.

For maliciously pulling down a piece of a House.

The Good Behaviour was granted against one upon an Article sworn against him, that he had maliciously pull'd down a piece of another's House. (*Hill. 22 Car. 1. B. R.*) For this is a vicious Act, and a high Breach of the Peace which concerns the Publick.

A Justice ought not to bind to Good Behaviour on a general Accusation.

A Justice of Peace ought not to bind any Person to the Good Behaviour upon a general Accusation made against the Party. (*Pasch. 23 Car. 1. B. R.*) *Vide supra.*

It lies for stopping a Constable in pursuit of a Felon.

One was bound to his Good Behaviour for stopping of a Constable from making Pursuit after a Felon. (*Trin. 23 Car. 1. B. R.*) For this is a publick Offence against the Commonwealth.

It lies not for speaking Words against one Person, but it does for speaking against several.

The Good Behaviour is not to be granted against one for speaking of Words only against one Person; but it may be granted against one for speaking of Words against divers Persons at several Times. (*Hill. 23 Car. 1. B. R.*) For that is a general Misbehaviour; but the other is but a particular Misbehaviour.

It lies for threatening to burn down a Man's House.

The Good Behaviour was granted against one, upon an Article sworn and read against him, that he said he would burn down another Man's House.

(*Hill.*)

Good Behaviour.

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(*Hill. 1649. B. S.*) For a Man shall be judged in many Cases by his Words, though no Actions accompany.

An Act of Parliament was made 5 & 6 W. & M. cap. 13. to repeal the Statute of 10 Ed. 3. for finding of Sureties for the Good Abearing of him or her that hath a Pardon.

5 & 6 W. & M. cap. 13.
Repeals Statute 10 Ed. 3.
for giving Securities af-
ter a Pardon.

Justices of the Peace under Colour of their Authority use to require the Good Behaviour of every one at their Pleasure; and if they refuse, then to commit them to Prison: But if they have not good Cause to require Sureties for their Good Behaviour, and the Party refusing to give them is committed to Prison, False Imprisonment well lies; for the Statutes which give them that Authority is principally for Vagrants, and such like; and not for every private Abuse.

Where and in what
Case a Justice ought to
require Sureties for the
Good Behaviour.

Who they may com-
mit, and who not.

Principally Vagrants.
34 E. 3. cap. 1.

Upon a Recognizance for the Good Behaviour taken in the Crown-Office, the Breach was, That he assaulted and beat A. B. such a Day, and says not *Vi & Armis*; and therefore naught. *Cro. Jac.* 412. pl. 12. See *Moor Case* 392.

Upon a Recognizance
for the Good Behaviour
the Breach was, that he
beat A. B. and says not
Vi & Armis, and naught.

Although the manner of speaking of some Words may be good Cause for binding of a Man to his Good Behaviour, yet when one is bound, Words only which tend not to the Breach of the Peace, or terrifying of others, or unto Sedition, &c. shall not be a sufficient Cause of Forfeiture of a Recognizance. *Cro. Car.* 498. pl. 3. 499. See *Moor Case* 395.

What Words shall be
a sufficient Cause to for-
feit a Recognizance for
the Good Behaviour, and
what not.

See what Matters will be a Breach of the Peace to forfeit a Recognizance, and what not. *Cro. El.* 86. pl. 7. See *Moor Case* 395.

What will be a Breach
of the Recognizance, and
what not.

Grants.

Grants.

Deeds.

Election.

See King, and King's Grants.

Non obstante.

Offices.

What the Words Give
and Grant do amount to.

The Words Give and Grant in a Deed of Things which lie in Grant, as Advowsons, Rents, Commons, Reversions, &c. will amount unto a Grant, a Feoffment, a Gift, a Release, a Confirmation or Surrender, at the Election of the Party, and may be pleaded as a Grant, as a Release, or as a Confirmation, at his Election. Co. Litt. 301. b.

A Grant to Father and Son, and he had but one Son, is good.

A Copy was granted to the Father and his Son, and he avers, that at the Time of the Grant he had but one Son; this is a good Limitation. Cro. Jac. 374. pl. 4.

But where he had several Sons, it is void for Uncertainty.

But where a Grant was to the Father and his Son, he having several Sons, and not saying which, it is void for Uncertainty. Cro. Jac. 374. pl. 4. 1 Rol. 832.

All Grants and Conveyances by Fine, or otherwise, of any Reversion or Remainder, shall be good without Attornment.

4 & 5 Annæ.

By the Statute of 4 & 5 Annæ cap. all Grants and Conveyances hereafter to be made by Fine or otherwise, of any Manors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual without the Attornment of the Tenants of any such Manors, or of the Lands out of which such Rents shall be issuing, or of the particular Tenant, upon whose Estate any such Reversions or Remainders shall and may be expectant or depending, as if Attornment had been made.

Notice must be given to the Tenant of such Grant.

Note, Notice must be given to the Tenant of such Grant.

Donor, Donee, and Thing granted in every Grant.

In every Gift of Lands or Goods which a Man makes, there ought to be a Donor, Donee, and Thing granted. 1 Plow. 435. 2 Plow. 563.

Grants.

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A Grant to a Man, with a Blank for his Christian Name, is void; except to an Officer known by his Office, and there also it must be averr'd. *Cro. Eliz.* 328. pl. 1.

A Grant to a Man without a Christian Name, is void.

So where a Deed or Bond is made to a Man, and his Christian Name is mistaken, it is void. *Ibid.*

So where the Christian Name is mistaken.

A Grant of an Annuity to a Lawyer, or a Physician, for the Life of the Grantee, *pro consilio impendendo* to the Grantor, and the Grantor dies; the Annuity doth not cease, but shall continue for the Life of the Grantee. *Sir Tho. Wroth's Case. 2 Plow. 456. b. 1 Plow. 378, to 382.*

A Grant of an Annuity *pro consilio impendendo*.
When it determines.

After an Annuity or Rent-Charge is determined, Debt lies for the Arrears, and the Person of the Tertenant shall be charged; because the Annuity being determined, he hath no other Remedy. 7 *Rep.* 39. b.

Debt lies for Arrears of an Annuity or Rent-Charge determined.

If I grant you my Trees in my Wood, you may cut them down, and come with your Carts over my Land to carry them away. 11 *Rep.* 52. a. 4 *Rep.* 62. 5 *Rep.* 11.

Trees granted in a Wood may be cut down and carried away.

A Grant for Life is made of all Woods and Underwoods growing in B. and the Grantee covenants to pay a yearly Rent; the Grantee immediately cuts down all the Woods, and afterwards cuts the Wood and Underwood which grew since the cutting: And held that the Grantee having once felled, shall never fell in the same Place again by Force of the said Grant, notwithstanding the yearly Rent, and Life in being. 3 *Leon. Case* 19. 57. 3 *Leon. Case* 79. *Moor, Case* 57.

A Grant of Woods when once felled shall not be felled again.

A Man grants all his Wood that shall grow in the Time to come: It is a void Grant, because a Man cannot grant that which is not *in esse*. 3 *Leon. Case* 57.

A Grant of his Wood that shall grow is void, because not *in esse*.

The King or a common Person grants *omnia illa messuagia in tenura A. B. situate in W. nuper Priorat' de W. spectan.* and in truth the Lands lie in D. Here because the Grant is general, and restrained to a certain Vill, the Grantee shall have no Lands out of the Vill. 2 *Rep.* 33.

Where a Grant shall be restrained to a Vill, and where not.

A. by Deed inrolled conveys all his Lands in the Tenure of B. in the Parish of S. whereas they were then in the Possession of B. but in another Parish: And held to be void: For although the first Certainty in the Tenure of B. was true; yet the last Certainty in the Parish of S. was false. 2 *Rep.* 33. a.

Where there is a Mistake of the Parish, how it shall be.

Words in Grants shall be construed according to a reasonable and easie Sense, not to strain things to what is unlikely and unusual. And therefore by a Grant of all Woods and Trees, Apple-Trees will not pass. *Hob.* 304.

How Words in Grants shall be construed.

What passes by the Grant of all Trees.

Where a Lessee grants *totum Messuagium*, and where *totum statum*, what passes.

An Interest for Years passes by a Grant of all his Lands :
So if he grants all other his Lands.

A Grant without Limitation of Estate, is good against a common Person.

mon Person shall be taken most strongly against himself : But if the King grants a Rent without Limitation of any Estate, the Grant is void for Uncertainty, and the Grantee shall not be so much as Tenant at Will. *Dav. Rep. 45. a.*

A Grant uncertain made good by Election.

this is good, and

Reduced to a Certainty by Election.

What passes by a Grant of Goods.

Lessee for Years of an House grants *totum Messuagium suum*, the Grantee hath but at Will ; but if he grants all his Interest and Estate in such an House, the whole Lease passeth. 2 *Leon. Case 102.*

By a Grant of all his Lands an Interest for Years will pass, because it is Land for the Time ; so where a Man grants all other his Lands and Tenements. *Plow. 424. a.*

If a common Person grants a Rent, or other Thing, that lies in Grant, without Limitation of any Estate ; there by the Delivery of the Deed only a Freehold passes, because the Grant of a common Person shall be taken most strongly against himself : But if the King grants a Rent without Limitation of any Estate, the Grant is void for Uncertainty, and the Grantee shall not be so much as Tenant at Will. *Dav. Rep. 45. a.*

A Man grants an Acre of Land out of a great Waste, and doth not say in what Part, or how to be bounded, nor any certain Description of it ; yet the Person may make his Election where he will, and by such Choice executed the Thing shall be reduced to a Certainty, which Choice the Grantee cannot have against the King. 1 *Leon. 30.*

By a Grant of Goods, Chattels real do not pass ; for when Men speak of Goods, Householdstuff, Money, and such personal Things only are understood. 4 *Leon. Case 222. Fol. 109.*

Guardian.

See Account.

WE have three Sorts of Guardians, viz.
The Guardian in Socage: The
Guardian appointed by the Father;
and the Guardian appointed by the
Court.

The several Sorts of
Guardians.

The Guardian in Socage is the next of Kin to
whom the Estate cannot descend: The Law makes
this Guardian where the Ancestor makes none; and
he hath the Profits of the Land to the Use of the
Heir, until he accomplish the Age of fourteen Years, (at which Time
his Authority expires) and thereof must give an Account to him. See
Co. Litt. Lib. 2. cap. 4, 5.

A Guardian in Socage.

The Guardian appointed by the Father is by
Vertue of the Statute of 12 Car. 2. cap. 24. by a
Clause of which Statute, since the Court of Wards
was put down, a Power is given to Parents to dis-
pose of their Children as they shall think fit; so that
any Father having a Child under twenty-one Years
of Age, and not married, may by Deed or Will
signed and sealed in the Presence of two or more
Witnesses, dispose of the Custody of such Child to
any Person, except a Roman Catholick, during such Time as such
Child shall remain under twenty-one Years of Age, or any lesser Time:
which Guardian shall take into his Custody, to the Use of such Child,
the Profits of all his Lands, &c. and Management of all his personal
Estate till his Age of twenty one, or such less Time as shall be mention-
ed in such Disposition.

A Guardian appointed
by the Father.
Stat. 12 Car. 2. c. 24.

A Guardianship of a
Child may be devised.

The Guardian appointed by the Court is, when
the Party is out of the Wardship of his Guardian
in Socage, he may then in Court, or before a Judge,
choose himself a Guardian.

The Guardian ap-
pointed by the Court.

See the Pleading of the Appointment of a Guar-
dian by the Father according to the Statute. 2 *Lutw.*
1185.

Appointment of a
Guardian pleaded.

Ravishment *de Gard* lieth on the Statute of
12 Car. 2. cap. 24. 3 *Keb.* 528.

Ravishment *de Gard*
lies on the Statute of
12 Car. 2. cap. 24.

Guard disposed by Will or Writing is not re-
pealable by parol Codicil in the Spiritual Court.

Guard disposed by
Will or Writing is not
repealable.

Feme

Feme Covert, not said by Guardian, is Error.

Feme Covert, not said by Guardian, is Error. 2 *Keb.* 878. pl. 52.

Also if not per Cur. *admiss.*

Not said per Cur. *admiss.* ill. 1 *Lev.* 224. but amendable by the Guardian-piece, if found.

Guardian may acknowledge Satisfaction on Record.

A Guardian of an Infant may acknowledge Satisfaction upon Record for a Debt, which he hath recovered at Law for the Infant. *Trin.* 23 *Car. B. R.*

But it must be a Guardian that is assigned by the Court to sue for the Infant; the Act of such a Guardian is adjudged the Act of the Infant.

The Court will assign a Guardian if the Infant come into Court and desire it: So too will a Judge at his Chamber; but then it is no Record till filed.

The Court will assign a Guardian to an Infant to sue or defend for him, if the Infant doth come into the Court and desire it; or a Judge at his Chamber, at the Desire of the Infant, may assign a Person named by the Infant to be his Guardian; but where the Guardian is assigned by a Judge at his Chamber, this is no Record until it is entred and filed with the Clerk of the Rules.

A Copyholder cannot dispose of his Children by
12 *Car.* 2. cap. 24.

A Copyholder is not within the Statute of 12 *Car.* 2. c. 24. to dispose of the Custody of his Children; for that belongs to the Lord or others, according to the Custom of the Manor. 3 *Lev.* 395.

What Guardian in Socage must do.

52 *D.* 3. cap. 17.

A Guardian in Socage shall make no Waste, nor Sale, nor Destruction of the Inheritance; but keep it safely for the Heir, and to account with him at his lawful Age, saving to himself his reasonable Costs.

A Guardian may keep Courts in his own Name, and grant Copies.

A Guardian in Socage may keep Courts in his own Name, and grant Copies, and it shall bind the Heir; for he is *Dominus pro tempore*, and hath an Interest in the Land, and the Court ought not to be kept in the Name of the Heir, but of the Guardian; and he shall be compelled to account for all the Fines which he takes. *Car. Jac.* 98, 99.

Must account for the Fines.

May grant over a Copyhold escheated to an Infant.

Where a Copyhold escheats to an Infant, the Guardian in Socage may grant it over. *Latch* 157.

The several Things that a Guardian may do; and what he may not do, and why.

A Guardian in Socage hath Interest in the Land, and may let it for Years, and also avow in his own Name and Right, and his Lessee for Years may maintain an Ejectment. But a Guardian in Socage cannot present to an Advowson, because he cannot account for it: But per one Judge: If the Heir be within Age of Discretion, the Guardian may present. *Cro. Jac.* 98, 99.

A Man devises the Education of his Son, and letting and setting till twenty-one.

A Man devises Lands to his Son, and willed that A. B. should have the Education of his Son till twenty one, and receive, set and let for him, and account to him, and be allowed his Charges: A. B. makes a Lease in his own Name for seven Years, which was half a Year longer than the Infant's Age; then A. B. dies, and

Guardian.

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and the Question was, Whether this was a good Lease for any Part of the Term? And *per Cur.* The Lease is void; for he is but Guardian for Nurture, and can only make Leases at Will. *Cro. El.* 678. and 734.

This is a Guardian for Nurture, and he can only lease at Will.

A Lord of a Manor hath no Power by the Common Law, or without a particular Custom, to grant the Guardianship of an Infant Copyholder. *Lutw.* 1190.

What Power the Lord hath to grant a Guardianship.

The Spiritual Court may appoint Guardians for Infants who have only personal Estates. 2 *Lev.* 262. 217.

Where the Spiritual Court may appoint Guardians.

The Court cannot appoint a Guardian to the Infant for his Appearance, unless the Heir be in Person in Court. 2 *Leon. Case* 238.

The Heir must be present at the Appointment of his Guardian.

The Court admitted an Infant by Guardian to sue an Account against his Guardian in Socage, for the Profits he received after the Infant came to fourteen, and the Action was brought against him as Bailiff. *Cro. Jac.* 219. *pl.* 9.

How an Infant to be admitted, and how to charge his Guardian.

An Action of Account lies against the Executors or Administrators of any Guardian, Bailiff and Receiver, *per Stat.* 4 & 5 *Annæ.* See Title Account.

Account lies against Executors or Administrators of Guardians. 4 & 5 *Annæ.*

An Infant and another Executor of full Age may sue by Attorney; but if sued, the Infant must appear, and plead by Guardian. 1 *Lev.* 299. 181.

How it is when an Infant and another Executor sues, or is sued.

Husband and Wife are sued, the Wife is under Age; she must appear by Guardian, otherwise it is Error. 2 *Lev.* 38. 1 *Ventr.* 185.

The Wife under Age must appear by Guardian.

A Guardian was assigned by the Court for an Infant to bring a Writ of Error, and in the Entry it is said, *quod præd.* the Infant, *per præd. A. B. Attorn.*

How an Infant shall be assigned a Guardian to bring a Writ of Error.

suum, who was admitted his Guardian; whereas it should have been *per custodem suum*: And for that Reason held that the Writ of Error was discontinued, whereupon the Plaintiff prosecuted a new Writ. *Cro. Jac.* 250. *pl.* 2.

How the Admission by Guardian to prosecute in the Common Pleas shall be, and how and where the several Entries of it are to be. *Cro. Car.* 86. *pl.* 7.

How the Admission by Guardian is to be in C. B. and how and where to be entred.

The Plaintiff may sue by Guardian or *Prochein amie*, but the Defendant only by Guardian. *Cro. Car.* 161. *pl.* 2.

The Plaintiff may sue by Guardian, or *Prochein amie*; but the Defendant by Guardian only.

When the Party is out of the Wardship of his Guardian in Socage, he may then in Court, or before a Judge, chuse his Guardian.

Where an Infant may chuse his Guardian.

The Admission to sue by *Prochein amie* ought to be entred upon Record; but it must be first entred in the Clerk of the Rules's Book, which is a Warrant to enter it upon Record, and it may be entred upon the Issue-Roll.

How the Admission by *Prochein amie* to be.

It is Error to sue *per prochein amie*, without an Admittance by the Court.

A Writ of Error was brought to reverse a Judgment in the Common Pleas, in an Action brought by an Infant in Trespass, where he sets forth in his Declaration, his Admission to sue *per proximum amicum*: And upon a *Certiorari* prayed, it was certified, That there was no Admission entred upon the Roll: But it was afterwards, by a Rule of Court, ordered to be entred, and another *Certiorari* was prayed and granted, and the Admission certified; and the Judgment was affirmed. And it was said by the Court, That they will grant a new *Certiorari* to affirm, not to reverse a Judgment. *Read and Waldron. Hill. 6 W. Rot. 249. B. R.*

Where the Wife, Guardian to an Infant, dies, living her Husband.

A Man devises to his Wife the Education of his Daughter, with her Portion and Profits of the Lands to her own Use, without Account, until the Daughter comes to eighteen; provided she pay the Quit-Rents, and keep the Daughter at School. The Wife took upon her the Execution of the Will, and married, and died, the Daughter being but fourteen. This is a Term given to the Wife, which accrues to the Husband. *Hob. 285.*

12 Car. 2. cap. 24. Sect. 8.

The Mother, Guardian in Socage, marries, and leases for Years, the Husband dies, it is void.

But see now the Statute 12 Car. 2. cap. 24. Sect. 8.

The Mother, Guardian in Socage to her Son of five Years of Age, marries; she and her Husband lease for eight Years; the Husband dies, the Wife enters, and good. *Osborn and Carden. 1 Plow. 239.*

The Executor of a Guardian shall not be Guardian.

If Guardian in Socage dies, his Executor shall not be Guardian. *Ibid.*

Husband shall not be Guardian upon the Wife's Death.

If a Woman Guardian marries, and dies, her Husband shall not have the Guardianship. *Ibid. 293.*

An Action lies against a Guardian who mispleads

Where a Guardian mispleads, and loses thereby, an Action lies against him. *Westcot and Colne. Poph. 139. Cro. Jac. 240. See Danv. 603.*

Where there may be a new Guardian.

Any Man may become Guardian to an Infant against his Father, to prevent his committing of Waste: Also Waste is by Law a Forfeiture of the Father's Guardianship. *Hard. 96.*

Waste, a Forfeiture of the Guardianship.

Where there hath been some Doubt of the Sufficiency of the Guardian in Socage, the Chancery hath made him give good Security. *2 Mod. 177.*

Where a Guardian shall give Security.

Who shall be Guardian in Socage.

The eldest Son of the half Blood, and not the Mother's Brother, shall be Guardian to the Son by a second Venter. *Cro. El. 825. pl. 27.*

The End of the first Volume.

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